Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

HAROLD F. CHORNEY, *Petitioner*

v.

JASON D. MONZACK, CHAPTER 7 TRUSTEE

JOHN F. CULLEN, CHAPTER 11TRUSTEE

UNITED STATES TRUSTEE, *Respondents*

On Petition For A Writ Of Certiorari

To The United States Court Of Appeals

For The First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The First Circuit Court of Appeals affirmed the interlocutory order of the Bankruptcy Court, dated May 13, 2009, stating that based upon and absence of certification under 28 U.S.C. §158(d)(2) it lacked jurisdiction to entertain appeals directly from the Bankruptcy Court. The District Court summarily ruled that since Petitioner did not file a timely appeal, concerning a different order from the same Hearing, within 10 days as prescribed by 11 U.S.C. Rule 8002(a), that it lacked jurisdiction to rule on the interlocutory appeal since the ten day filing is both "mandatory and jurisdictional."

Whether the bankruptcy courts have pendente lite powers that are subject only to District Court review and bar the Court of Appeals and the Supreme Court of the United States from reviewing interlocutory orders in bankruptcy cases, including those orders which impair the fundamental right to due process of law?

Whether the Executive Office of U. S. Trustees has allowed the administration of a bankruptcy case to operate contrary to statute, bypassing the requirements of the Bankruptcy Code and denying due process to Petitioner thus justifying the Supreme Court of the United States to exercise its supervisory powers and impinge on the prerogatives of the other branches?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Harold F. Chorney respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit dated March 11, 2010, in Ca. No. 09-2017, appears in Appendix C to this petition.

The opinion of the United States Court of Appeals for the First Circuit, dated August 26, 2009, in Ca. No. 09 1117, dated August 26, 2009, appears in Appendix G to this petition.

The opinion of the United States District Court for the District of Rhode Island, dated July 17, 2009 appears in Appendix I to this petition.

The opinions of the United States Bankruptcy Court for the District of Rhode Island, one dated June 9, 2009, appears in Appendix M to this petition and the other opinion appears in the transcript of the hearing, Appendix O-1, dated May 13, 2009 .

JURISDICTION

The Court of Appeals opinion in this matter was filed on March 11, 2010. A timely Motion for Rehearing was filed on March 16, 2010 and denied on April 2, 2010 as appears in Appendix A. This Court's jurisdiction is invoked under Title 28 U.S.C. §1254 (1), and 28 U.S.C. §1651

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; not shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV to the United States Constitution:

Sect. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection under the laws.

*Sect. 5.*The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT OF THE CASE

On May 13, 2009, the Bankruptcy Court entered an order [doc #1059] (Appendix O) denying Petitioner's Motion for authorization to file a motion and memorandum objecting to the trustee's final report and account before distribution. In addition to [doc#1059] the bankruptcy judge made a bench decision that Petitioner was not a party in interest. (See Appendix O-1, Transcript of Hearing.)

Petitioner did not receive order [doc#1059] by mail. NOTE: On May 11, 2009 [Doc #1060] Notice of Hearing on May 13, 2009 was allegedly filed. This Notice of the Hearing [Doc #1060] was filed *after* the Order denying the Motion in Objection to the Final Report [Doc #1059]. One of the bankruptcy court clerks telephoned Petitioner on May 11, 2009 to notify Petitioner of the Hearing on May 13, 2009. (See Appendix F.) (See E769-771.) [1]

Petitioner filed a Notice of Appeal on June 5, 2009 (Appendix N), after he received a copy of the transcript of the hearing (Appendix O-1) he had ordered at the Hearing on May 13, 2009 with a fourteen (14) day delivery.

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[1] (Nine volumes of Exhibits containing 802 pages, each labeled with an "E" page number has been presented to the District Court for the District of Rhode Island. The "E" numbered pages above refer to the "E" page numbers in these nine Volumes of Exhibits.)

Some creditors did not receive Notice of the Hearing [Doc. #1060] until May 15, 2009, two days after the hearing. See Affidavit of Forrest Wallace Cato E795-797.

The First Circuit Court of Appeals decision (Appendix G) and the District Court for the District of Rhode Island decision (Appendix T) affirmed the Bankruptcy Court order [doc #1059] of May 13, 2009, stating that Petitioner did not file a timely appeal within 10 days as prescribed by Fed R. Bank. P. 8002(a) and that the ten day filing is both "mandatory and jurisdictional". On July 2, 2009, Petitioner filed a Motion for Leave to File Interlocutory Appeal of the Bench Order Dated May 13, 2009 (Appendix L), stating that Petitioner was not a "party in interest" in bankruptcy case no. 89-11051. The District Court on July 17, 2009 "Denied [motion] for the reasons set forth in the Response" [of Respondent, dated July 10, 2009](Appendix K) , namely that Petitioner's Motion for Leave to File Interlocutory Appeal is improperly filed with the District Court and the Court's jurisdiction to hear an appeal from the Bankruptcy Court is derived from 28 U.S.C. §158. To invoke the jurisdiction of this Court, a timely appeal must be filed pursuant to Rule 8002 of the Fed R. Bank. P. As a timely appeal was not filed, this Court lacks jurisdiction to consider Petitioner's Motion.[2]

The First Circuit Court of Appeals upheld the District Court ruling that Rule 8002 is both mandatory and jurisdictional and that the untimely appeal deprived both the District Court and the Circuit Court of jurisdiction to rule on the interlocutory appeal. (See Appendix C.)

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[2] Effective December 1, 2009, Amendments to the Federal Rules of Bankruptcy Procedure were made including Rule 8002(a),(b) and (c). Rule 8002. Time for Filing Notice of Appeal (a) Ten-day period in the 2009 Edition of Bankruptcy Code, Rules and Forms. The 2010 Edition of Bankruptcy Code, Rules and Forms reads Rule 8002. Time for Filing Notice of Appeal (a) Fourteen-day period.

BACKGROUND:

Petitioner was the principal in a company, (C.I.C.) Cumberland Investment Corporation, that was petitioned into bankruptcy in 1989. As of the date of this Supreme Court Appeal the case is still open after twenty-one years and the money in the estate has not been distributed to various parties in the case despite the fact that the last of the assets of the estate were sold over ten years ago on Dec., 1999.

Early in the bankruptcy case, a criminal referral was made by a court appointed Examiner on May 30, 1990. A Chapter 11 Trustee, John F. Cullen was appointed by the court on August 17, 1990, the same date that Mr. Cullen entered the premises of C.I.C *without* a search warrant and removed corporate and non corporate documents and corporate as well as non corporate assets.

On August 24 and September 13, 1990, Attorney for Petitioner, David N. Cicilline sent letters to Trustee Cullen concerning personal assets seized. Mr. Cullen did not respond to either letter. (See Appendix S, page 13, E401-402.)

Subsequently Petitioner was indicted and convicted of a false statement to a financial institution in Cr. No. 92-099P on May 26, 1993. The Examiner and Trustee Cullen testified for the prosecution at Petitioner's trial.

On July 27, 2007, Mr. Bertozzi, the attorney for both Trustee Cullen and the Examiner, Michael Weingarten submitted billings to the bankruptcy court. Then on October 26, 2007, Mr. Cullen submitted his billings to the bankruptcy court.

When Petitioner compared the billings of Mr. Cullen and Mr. Bertozzi, he discovered that there were twenty different time and place and other discrepancies between the billings. In addition Mr. Bertozzi's July 27, 2007 billing stated that, "[Edwards Angell Palmer & Dodge] EAPD is not seeking payment of $35,921.36 in fees for services rendered to the Trustee[3] during the period August 39, 1991 through December 22, 1993 because due to a glitch in transferring data to a new computer, EAPD cannot recover the data as to individual time entries for that period..."

The so called "missing" Bertozzi billing is not missing at all. It is docket #414 in Ca. No 89-11051. It shows numerous meetings between Mr. Bertozzi and A.U.S.A. Posner. The 9/26/91 Cullen billing, also referencing Petitioner's criminal trial investigation, is quite different from the "sanitized" October 26, 2007 billing. Discussion of Cullen and Bertozzi billings appear in Appendix W.

Mr. Cullen's 2007 billing contained newly discovered evidence, including the existence of additional videotapes requested but not produced at trial, about the assets of Cumberland Investment Corporation, relevant to Petitioner's guilt or punishment. These billings were included as part of the administrative expenses for the Final Report to be submitted by Jason D. Monzack, Chapter 7 Trustee, who replaced Mr. Cullen as Trustee in the Cumberland Investment Corporation case subsequent to the criminal trial.

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[3] An Affidavit of Donald C. McQueen, Senior Vice President of Eastland Bank, was made in an effort to increase Petitioner's sentence after his criminal trial. This November 1995 Affidavit indicates that previous payment was made to Mr. Bertozzi. Mc Queen states, "To the best of my recollection over $200,000 was used by the Trustee.....Part of that expenditure by the bank was to pay the fees of the attorney for the Trustee." (See E445-447.)

Petitioner and others have requested disclosure and production of materials[4] from Mr. Cullen and his successor, Jason D. Monzack 1. the Chapter 7 Trustee in Bankruptcy, on numerous occasions over the past twenty years, virtually without success. Petitioner sent Mr. Monzack, a list of assets which were conspicuously missing or unaccounted for, seized by Trustee Cullen, including both corporate and personal assets of Petitioner on June and Sept. 1994, but received no response.

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[4] On May 17, 1995, a letter was sent by Mr. Monzack to Mr. Cullen, Mr. Bertozzi, Mr. Weingarten (Examiner), the Postal Inspector, the U.S. Attorney, the FBI, Fleet Bank, the FDIC and others, seeking inventories and other documents. (See E148-E150.) The production was virtually without success, with exception of the production of 19 videotapes of the removal of Cumberland assets on August 17 and August 23, 1990 Only Mr. Taft, a client in search of his missing assets, was "allowed" to view these videotapes. Petitioner and his attorney were forbidden to view these videotapes. (See July 21, 1995 letter from Mr. Monzack to Mr. Taft, E350.) Petitioner did not obtain a copy of the 19 videotapes until October 1999, in response to an F.O.I.A to the Executive Office of U.S. Attorneys.

The revelation of the existence of additional videotapes to the 19 videotapes produced on October 1999 after trial were contained in the Cullen billing, dated October 26, 2007.

The history of this case demonstrates that seeking an accounting of the assets and the billing practices in this case seems to result in "retaliation" by officials of the Bankruptcy Court.[5] Many of the events related to the sanctions imposed upon Petitioner, including the November 3, 2004 sanction, refer to events ruled upon in several past appeals in which Appellant was seeking an accounting of the assets seized, those sold and those remaining. This November 3, 2004 court order requires Petitioner to present pleadings to chambers asking for permission to file with the clerk of courts and has resulted in preclusion to access to the courts. NOTE: Petitioner for reasons unknown did not appeal the November 3, 2004 Order. Petitioner surmises that similar to the May 13, 2009 order, he did not receive the November 3, 2004 written order by mail in order to have appealed that order in a timely manner.

Petitioner requested permission to file with the clerk of courts from chambers on August 3, 2007. Petitioner wrote to Judge Votolato requesting a Motion to Clarify the billing of Mr. Bertozzi and sent the motion by certified mail, return receipt requested to Judge Votolato. When no one signed for this motion, the U.S. Postal Department was notified and a second package was sent to chambers with a "Restricted Delivery" on August 20, 2007. A chronology of events is contained in an Appeal from a Judgment of the United States Bankruptcy Court for the District of Rhode Island Ca. No. 89-11051, dated November 1, 2007, appears in Appendix W of this petition.

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[5] The U.S. Trustee is supposed to protect the integrity of the Federal Bankruptcy system. Their duties include the just, speedy and economical resolution of cases filed under the bankruptcy code to further public interest. They are supposed to monitor the conduct of bankruptcy parties and oversee related administrative functions. Petitioner has serviced the U.S. Trustee in both Providence, R.I. and Boston, MA concerning issues involved with the bankruptcy case, including a list of items, including personal property, which were seized by Mr. Cullen on August 17 and August 23, 1990, which are conspicuously missing or unaccounted for to this date. (See Appendix S, page 15, E120-125.)

This instant appeal to the Supreme Court of the United States concerns these *continuous* due process violations. This appeal demonstrates how Petitioner was once again denied due process when a full and fair hearing was denied to him after the docket was manipulated in a manner designed to deprive Petitioner the opportunity to present his case on May 13, 2009. As a result of this May 13, 2009, hearing, a written JUDGMENT [1059] denying Petitioner's Motion in Objection to the Final Report and Account before Distribution [1050] and a bench decision that Petitioner was "not a party in interest" were made.

On May 13, 2009, Petitioner ordered a copy of the Hearing transcript from a court clerk for a 14 day delivery for appeal purposes. Petitioner did not receive a copy of the bench decision of the bankruptcy judge in the mail and filed a Notice of Appeal when he received the transcript of the Hearing on June 5, 2009.

The Notice of Appeal (E 799), dated June 5, 2009, refers to both the Petitioner's appeal of the bench decision that Petitioner was not a party in interest (E-780) and the final judgment [1059] Order Denying Document (doc

#1050) After Hearing. Both of these decisions were dated May 13, 2009.

On June 9, 2009, the Bankruptcy Court issued an ORDER DISMISSING APPEAL [Doc. #1065], (See E-801.) The dismissal of doc. #1050 was based upon Fed R. Bank. P. 8002(a). [6] This dismissal order did not address the bench decision stating that Petitioner was not a party in interest.

On July 2, 2009, Petitioner filed MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009 that Petitioner is not a party in interest to the District Court for the District of Rhode Island in Ca. No. 08-189ML in accord with 28 U.S.C. §158(A)(3) appears as Appendix L.

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[6] Transcripts of other court hearings ordered by Petitioner from the Bankruptcy Court clerk have taken less than two weeks. For instance, [986] Hearing on March 27, 2008. Petitioner ordered a transcript of that hearing at the hearing. The transcript was filed with the court on 4/8/08 [988] and the order denying the Motion to Clarify was issued on 5/8/2008 [1007], and a certificate of mailing was done on 5/10/2008 [1009]. A Notice of Appeal was filed three days later on 5/13/2008, [1012].

On May 13, 2009, Petitioner ordered a transcript of the May 13, 2009 hearing, denying [1050] Motion Petition for Authorization to file Motion (and Memorandum of Law) in Objection to the Final Report. The Order, [1059], was dated May 13, 2009, the same date as the hearing. The certificate of mailing Order [1061] was dated May 15, 2009, and the transcript [1064] was filed with the court on June 5, 2009, the same day that Petitioner received the transcript by email and filed the Notice of Appeal. NOTE: [1062] is missing from the docket entries of the U.S. Bankruptcy Court for the District of R.I.

According to Title 28 §158(a) The district courts of the United States shall have jurisdiction to hear appeals. (1) from final judgments, orders and decrees; (2) from interlocutory orders (3) and with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

Petitioner asked the District Court for permission to file this interlocutory appeal since Title 28 §157(A) involved matters concerning the administration of the case.

On July 10, 2009, Mr. Monzack filed RESPONSE TO HAROLD F. CHORNEY'S MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009. (See Appendix K.) The arguments listed are:

"A. Mr. Chorney's Motion for Leave to File Interlocutory Appeal is improperly filed with this Court; and B. The Court lacks jurisdiction to consider Mr. Chorney's motion. ...To invoke the jurisdiction of this Court, a timely appeal must be filed pursuant to Rule 8002 of the Federal Rules of Bankruptcy Procedure. As a timely appeal was not filed, this Court lacks jurisdiction to consider Mr. Chorney's motion."

On July 16, 2009, Petitioner filed a REPLY TO TRUSTEE MONZACK'S RESPONSE TO MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009. (Appendix J) This reply concludes that using the rationale of Trustee Monzack, because no Notice of Appeal was filed within ten days of the Final Order, then none of the due process violations could be addressed in an interlocutory appeal. If this were true, then the rules as they exist are manifestly unjust concerning the circumstance involved with the May 13, 2009 Hearing.

On July 17, 2009, the District Court denied the MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009 (See Appendix I.) for the reasons set forth in the Response above, prior to receiving Appendix J.

On July 20, 2009, Petitioner filed a NOTICE OF APPEAL of the July 17, 2009, District Court denial to the Circuit Court of Appeals for the First Circuit. (See Appendix H.)

A JUDGMENT of the Circuit Court, entered on August 26, 2009 in a related case, CA. No. 09-1117 (Appendix G), the court stated that:

"On a separate matter, appellant has moved "for leave to file interlocutory appeal of the bench order dated May 13, 2009." This court lacks jurisdiction, absent certification under 28 U.S.C.§158(d)(2), to entertain appeals directly from the bankruptcy court. The motion is thus denied, but in light of subsequent developments, such denial is without prejudice to the matter being pursued in Appeal No. 09-2017."

On September 18, 2009 (Appendix F), Petitioner filed a brief with the First Circuit Court of Appeals in Case No. 09-2017. On October 21, 2009 Mr. Monzack filed Brief of Appellee (Appendix E).

On October 30, Petitioner filed Reply Brief of Appellant on Appeal from a Judgment of the District Court for the District of Rhode Island, dated July 17, 2009 (Appendix D).

On March 11, 2010, Judgment of the First Circuit Court of Appeals upheld the decision of the District Court stating that compliance with Fed. R. Bank. Pr. 8002(a) is both mandatory and jurisdictional and that the court lacked jurisdiction to address the substantive arguments (Appendix C).

On March 16, 2010 Petitioner filed a motion for a rehearing (Appendix B).

On April 2, 2010, the petition for rehearing is denied (Appendix A).

B. DISCUSSION:

I. PENDENTE LITE POWERS OF THE BANKRUTPCY COURT

It appears that the bankruptcy courts have pendente lite powers that are subject *only* to District Court review and thus barring the Court of Appeals and the Supreme Court of the United States from reviewing interlocutory orders in bankruptcy cases.

Should there be a situation where the District Court lacks jurisdiction to hear an appeal, then neither the District Court nor the First Circuit Court of Appeals have the jurisdiction to review bankruptcy court decisions.

The Judgment of the District Court in this instant appeal is that they lack jurisdiction to rule upon Petitioner's

Motion for Leave to File Interlocutory Appeal as a timely appeal pursuant to Rule 8002 of the Federal Rules of Bankruptcy Procedure was not filed. As a result, the decision of the bankruptcy court stands without being reviewed by the District Court.

The Judgment of the First Circuit Court of Appeals is that they also lack jurisdiction to rule upon Petitioner's leave to file an interlocutory appeal, absent certification under 28 U.S.C. §158(d)(2). The Appeals Court then stated a controlling decision, In re Abdallah, 778 F. 2d 75, 77 (1st Cir 1985.) Stating that the ten day filing requirement is both "mandatory and jurisdictional." And that the untimely appeal deprived both district court and this court of jurisdiction.

As a result of the District Court claiming they lack jurisdiction to review the bankruptcy decision, the decision of the bankruptcy court stands without being reviewed by either the District Court or the First Circuit Court of Appeals.

II. LACK OF HIGHER COURT REVIEW

By the District Court for the District of Rhode Island claiming a lack of jurisdiction to hear the interlocutory appeal, in a summary decision dated July 17, 2009, the First Circuit Court of Appeals lacked jurisdiction under 28 U.S.C.A. § 1291 to review an interlocutory order of the District Court and the power of review under 28 U.S.C.A. §1292, even when the order has had an irreparable effect on the rights of the parties. (See Cohen v. Beneficial Industrial Loan Corporation, 69 S. Ct. 1221, 1225, 1949.

As a result, the appeals courts were denied the right to combine in one review all stages of the proceeding that effectively may be reviewed and corrected if and when final judgment results.

It appears that if the District Court had jurisdiction that this decision would appear to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.

III. THE RULING OF THE BANKRUPTCY COURT INVOLVES CONFLICTING DECISIONS

The decision of the bankruptcy court, that Petitioner is not a party in interest is contrary to existing law determining what constitutes a party in interest.

According to 11 U.S.C. 1109(b) a "party in interest", including a creditor may raise and may appear and be heard on any issue in a case under this chapter. The bankruptcy court's ruling that Petitioner is not a party in interest deprives Petitioner of this statutory right to be heard.

The history of the bankruptcy case shows that Petitioner was always a "party in interest" from the date of the filing of the bankruptcy until May 12, 2009. Petitioner was always serviced as being a party in interest. He was a shareholder, a creditor and had a pecuniary interest ranging from the Trustee claiming Petitioner owes the estate over $200,000 resulting from a fine, to Petitioner having personal property being seized by Trustee Cullen on August 1990. Yet on May 13, 2009, Judge Votolato stated, "You've been determined to be not an interested party. And I'm stating that as the law of this case, okay.", appears in Appendix O-1, TR 5/13/09, pg 7, (E780).

In examining the criteria for a party in interest, there can be little doubt that Petitioner is a "party in interest." In re Peachtree Lane Assocs., Ltd., 188 B.R. 815, 824 (N.D. Ill. 1995) (comprehensive examination of the precedent on what satisfies the standard for being a party in interest); accord In re Johns-Manville Corp., 36 B.R. 743, it certainly includes creditors and shareholders....It is "generally understood to include all persons whose pecuniary interests are directly affected by the bankruptcy proceeding. (See Appendix L.)

IV. THE RULINGS OF THE BANKURPTCY COURT SUPERSEDED THE FUNDAMENTAL RIGHTS OF THE PETITIONER

Title 11 U.S.C. §105(a) gives the bankruptcy judge power to issue orders to carry out the provisions of the title...to prevent an abuse of process. Ironically, if the Bankruptcy Court's Order is upheld, the result would have an irreparable effect on the rights of Petitioner including the right to be heard as well as his right to have reviewed a myriad of due process violations contained in Appellant's Motion and Memorandum in Appeal of the Bench Order Dated May 13, 2009, in Ca. No. 09-2017, dated September 18, 2009 as appears in Appendix F.

The lack of review by the appeals courts will cause irreparable harm to the fundamental rights of Petitioner in accord with Cohen v. Beneficial Industrial Loan Corporation, 69 S. Ct. 1221, 1225, 1949.

The Supreme Court in Digital Equipment Corp. v. Desktop Direct, Inc., 511 U.S. 863, 879, stated that the only matters of sufficient importance to merit a collateral appeal were "those originating in the Constitution or statutes."

The ruling of the Bankruptcy Court if upheld will supersede the fundamental rights of the Petitioner as a party in interest to be heard and deny Petitioner equal protection under the law in accordance with the United States Constitution, Amendment XIV, since a creditor may raise and may appear and be heard on any issue in a case under this chapter.

Besides the decision of the District Court that they lack jurisdiction to rule upon the interlocutory appeal is in conflict with the spirit of Cohen v. Beneficial Industrial Loan Corporation and the Digital Equipment Corp v. Desktop Direct. Inc. cases where matters of sufficient importance to merit a collateral appeal exists, namely "those originating in the Constitution or statutes." Petitioner avers that he cannot be heard without proper notice.

V. ADMINISTRATIVE AGENCIES ARE NOT PERFORMING THEIR DUTIES TO OVERSEE THE CASE

Petitioner believes that a major contributing factor to the entire situation is the fact that the U.S. Trustee's Office has failed to perform their duties. In previous pleadings over the past 21 years involving the Cumberland Investment Corporation case, Petitioner has argued that in the administration of this case the following statutes have been circumvented as appears in Appendix D: 11 U.S.C. § 327(f); 364(c)(1); 704(1); 704(2); 704(7); 1109(b); 2012(b)(2); 2013(b); and Rule 2014(a). (See Appendix F.) By circumventing these statutes, Petitioner has been denied an accounting of the assets by the Chapter 11 and Chapter 7 Trustee thus denying Petitioner evidence relative to his guilt or punishment in CR 92-099P.

It appears that the current system exists in which no appeals court, applying the circumstances of this case, is authorized to review these abuses of process?

VI. NEED FOR THE GUARDIAN OF THE CONSTITUTION TO INTERCEDE

If the District Court and the First Circuit Court of Appeals lack jurisdiction to rule upon the substantive issues of this case then the questions of law involving procedural due process and those conflicting decisions concerning due process fail to be ruled upon.

One of the central issues in this case is that there is an interrelationship between the civil and criminal cases as appears in Appendix W. Petitioner rights are affected by the taking of his possessions by a warrantless search and seizure. Without the Trustees providing a proper accounting of the assets seized, sold and remaining, Petitioner is unable to properly address issues involving both his guilt and punishment in the criminal case. In addition, Petitioner as a party in interest is entitled to be heard in the civil case. In order that Petitioner may enjoy that right, Petitioner must be notified. See Parham v. Cortese, 407 U.S. 67, 92 S. Ct. 1983, 1994, 32 L.Ed. 2d 556.

It appears as if the Executive Office of U.S. Trustee's has not performed their duties in overseeing this case and has systematically violated their own statutes resulting in the denial of my right to be heard. (See Appendix O-1.)

The fundamental rights of Petitioner are being trampled upon and not ruled upon. Without the Guardian of the Constitution, the Supreme Court of the United States having jurisdiction to intercede in a case like this one, with no apparent time limit or urgency to protect the interest of all parties in this twenty-one year old case, will certainly have a chilling effect upon Petitioner and other parties of interest within the bankruptcy court arena.

D. CONCLUSION

If the bankruptcy courts have pendente lite powers that are subjected only to district court review and barring the Court of Appeals and the Supreme Court of the United States from reviewing interlocutory orders in bankruptcy cases, then the Judgments of the Bankruptcy Court which are contrary to statute, case law and depriving individuals of due process of law and other fundamental protections prevail over the Constitutional and safety net protections. The Supreme Court of the United States, as the Guardian of the Constitution, should intercede in judgments which merit review because these judgments which blatantly deny due process can only have a final and irreparable affect on rights of the parties.

When the Executive Office of U. S. Trustees has allowed the administration of a bankruptcy case to bypass the bankruptcy code and operate contrary to statute, the Supreme Court of the United States is justified and possibly mandated in exercising its supervisory powers and impinging on the prerogatives of the other branches for the public good.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons:

When an administrative agency similar to the Executive Office of U.S. Trustees is not performing their fiduciary duties in overseeing the administration of a bankruptcy case and when the laws as written do not allow courts to rule upon the substantive arguments in an appeal from a Defendant or Appellant or any party in a case because the court rules that it lacks jurisdiction to hear said matters, based upon statute, and case law, then where can a Petitioner turn to for justice if not to the Guardian of our Constitution, the Supreme Court of the United States.

If a court of last resorts did not exist, then a case like Petitioner's fraught with due process violations such as manipulations of the docket and lack of adequate notice, and other violations of due process, including the lack of accountability of the assets and the non-disclosure of evidence in a related criminal case could not be reviewed by an appeals court.

The Bill of Rights, containing the Due Process Clause, was established to protect citizens from government. A legal system, without safeguards to oversee the enforcement of administrative statutes and related case law, would result in a system where the constitutional protections contained in the Bill of Rights would be superseded by these very administrative statutes and related case law.

It would be impossible for an American citizen, like Petitioner to obtain justice in a court system that denies them due process, including manipulation of the docket and lack of adequate notice, and the taking of private property without just compensation and other violations of the Fifth Amendment to the United States Constitution, while sanctioning Petitioner for seeking due process of law while ruling that Petitioner lacks standing to get an accounting of his property and seek discovery.

Petitioner, Harold F. Chorney, respectfully prays that a writ of certiorari be issued to review those laws which prevent appeals courts the latitude and the jurisdiction from having the power to review court orders to prevent an abuse of process; to insure fundamental fairness and equal justice under law in the people's court system.

CONCLUSION

For the aforesaid reasons, the writ of certiorari should be granted to protect the rights of the public from being high-jacked by those both sworn to protect us and also having the fiduciary duty to enforce existing administrative statues. Without due process of law to insure proper notice, a fair hearing and a neutral judge, there will be no confidence and respect in our institutions and in the integrity of our legal system and in those responsible for making public policy. Should this honorable court grant certiorari to Petitioner, oral argument will be presented on behalf of the Petitioner by an attorney qualified for admission to the Bar of the Supreme Court of the United States of America.

Respectfully submitted,

Harold F. Chorney

Harold F.Chorney
16 Spring Drive
Johnston, R.I. 02919
(401) 934-0536

Date: July 1, 2010

APPENDIX

Supreme Court, U.S.
FILED

No. 10-46 JUL 1 2010

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

HAROLD F. CHORNEY, *Petitioner*

v.

JASON D. MONZACK, CHAPTER 7 TRUSTEE

JOHN F. CULLEN, CHAPTER 11TRUSTEE

UNITED STATES TRUSTEE, *Respondents*

On Petition For A Writ Of Certiorari

To The United States Court Of Appeals

For The First Circuit

APPENDIX I TO WRIT OF CERTIORARI

HAROLD F. CHORNEY

16 SPRING DRIVE

JOHNSTON, R.I. 02919

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United States Court of Appeals
For the First Circuit

No. 09-2017

IN RE: CUMBERLAND INVESTMENT CORPORATION,

Debtor,

HAROLD F. CHORNEY,

Appellant,

v.

JASON D. MONZACK, ET AL.,

Appellees.

Before

Torruella, Boudin and Lipez,

Circuit Judges.

ORDER OF COURT

Entered: April 2, 2010

The petition for rehearing is denied.

By the Court:

/s/ Margaret Carter, Clerk.

cc:

Edward J. Bertozzi

Harold F. Chorney

Jason D. Monzack

US Trustee

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND INVESTMENT CORPORATION,

Debtor

Harold F. Chorney, Appellant

v. CA 09 2017

Jason D. Monzack,

John F. Cullen,

U. S. Trustee Appellees

APPELLANT'S MOTION AND MEMORANDUM FOR RECONSIDERATION OF THE JUDGMENT ENTERED March 11, 2010 IN AN APPEAL OF THE BENCH ORDER DATED MAY 13, 2009

Now comes Harold F. Chorney, a pro se Appellant with property interests and an interested party in the above captioned matter from November 8, 1989 until May 12, 2009, and respectfully requests the Court to take notice of the *continuous* lack of notice and due process violations in this case.

Appellant had produced a chronology of notice defects in Brief of Appellant, dated September 18, 2009, on pages

17-22 inclusive. The instant motion is based upon these and other possible notice defects of the bankruptcy court. Not included in this chronology was the receipt of correspondence and/or pleadings from the bankruptcy court which were addressed to zip code 02903 instead of zip code 02919. See Exhibit A.

Appellant has searched without success through numerous boxes of documents for envelopes he saved other than the misaddressed envelope in Exhibit A from the bankruptcy court. Appellant did not record the date and time of Exhibit A and other 'mislabeled' mailings he has received from the bankruptcy court.

As a result of the information above, Appellant respectfully requests the court to overturn the March 11, 2009 Judgment concerning the ten-day period prescribed by Fed. R. Bank. P. 8002(a) that the court lacked jurisdiction to address the substantive arguments addressed in the Brief of Appellant based upon:

The history of failure by the bankruptcy court to provide proper notice to Appellant, for example, par 28. Page 20 of Appellant Brief 28. On May 15, 2009 Notice of Hearing, dated 5/11/09 [1060] received by Appellant and presumably by other parties in interest concerning hearing to be held on 13 May 2009 two days after the hearing actually happened. (See E769-771.)

The possible notice defects of the bankruptcy court subsequent to the May 13, 2009 Hearing, a Hearing at which Mr. Cullen was listed as being there under APPEARANCES on the May 14, 2009 docket when he was not. (See par. 27 on page 20 of Appellant Brief.) (See E794.)

3. Appellant had ordered the transcript of the May 13, 2009 Hearing on May 13, 2009 in order to appeal the bench decision of Judge Votolato (See par. 26 on page 20 of Appellant Brief.) (See E774-793.) and then waited for a copy of the bench decision which did not arrive. (See par. 29. on page 21 of Appellant Brief.)

Upon receipt of the transcript by email on June 5, 2009, Appellant hand delivered authorization to file Notice of Appeal with the Bankruptcy Court clerk. [1065] (See par. 32-33 on page 21 of Appellant Brief.)

The lack of proper notice has denied Appellant due process, impairing the fundamental fairness and basic integrity of these proceedings, resulting in the truth being hidden, and in a miscarriage of justice.

WHEREFORE, Appellant prays this honorable court rule upon the substantive arguments addressed in Appellant's Brief.

Respectfully submitted,

s/Harold F. Chorney

16 Spring Drive

Johnston, R.I. 02919

401 934-0536

CERTIFICATION

I hereby certify that on this _____day of March 2010, I sent a copy of the above by first class mail to the following:

Edward J. Bertozzi, Jr., Esq.
Edwards Angell Palmer & Dodge LLP
2800 Financial Plaza
Providence, R.I. 02903

Jason D. Monzack
Kirshenbaum & Kirshenbaum
888 Reservoir Avenue
Cranston, R.I. 02910

Leonard DePasquale, AUST
Office of the U.S. Trustee
10 Dorrance Street
Providence, R.I. 02903

John Fitzgerald, III, Esq.
United States Trustee
Thomas P. O'Neill, Jr. Federal Office Bldg.
10 Causeway Street, Room 472
Boston, MA 02222-1043

s/HAROLD F. CHORNEY

App. C

United States Court of Appeals

For the First Circuit

No. 09-2017

IN RE: CUMBERLAND INVESTMENT CORPORATION

Debtor

HAROLD F. CHORNEY,

Appellant,

v.

JASON D. MONZACK, ET AL.,

Appellees,

Before

Torruella, Boudin and Lipez,

Circuit Judges.

JUDGMENT

Entered: March 11, 2010

Harold Chorney appeals from the district court's denial of a motion for leave to appeal from an order of the bankruptcy court. The bankruptcy court there applied a 2004 injunction barring Chorney from filing further pleadings in this protracted case without leave of court. More particularly, it denied Chorney's request for authorization to file an objection to the Chapter 7 trustee's final report and related submissions.

The instant appeal fails for at least three reasons. First, because Chorney's notice of appeal in district court was filed beyond the ten-day period then prescribed by Fed. R. Bank. P. 8002(a), that court lacked jurisdiction to address his substantive arguments. Compliance with Rule 8002(a)'s ten-day filing requirement "is both mandatory and jurisdictional." In re Abdallah, 778 F.2d 75, 77 (1st Cir. 1985) (adding that ultimately appeal deprived both district court and this court of jurisdiction); accord, e.g., In re Bayhi, 528 F.2d 393, 401 (5th Cir. 2008). Second, even if the notice of appeal could be construed as a request for a filing extension under Rule 8002(c)(2), Chorney has advanced no explanation for his tardiness that would amount to excusable neglect. Third, even if Chorney's underlying arguments were to be reached, they would fail for the same reasons relied on in earlier cases. See, e.g., In re Cumberland Inv. Corp., No. 09-1117 (1st Cir. 2009) (rejecting claims of Chorney similar to those here advanced); In re Cumberland Inv. Corp., 2003 WL 21435745, at *1 (1st Cir. 2003)(per curiam) (affirming dismissal of Chorney's appeal "for reasons of lack of standing and the barring effect of prior final orders and judgments").

Dismissed in part for lack of jurisdiction and otherwise affirmed.

By the court:

s/ Margaret Carter, Clerk.

cc:

Edward J. Bertozzi

Harold F. Chorney

Jason D. Monzack

US Trustee

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND INVESTMENT CORPORATION

Harold F. Chorney, *Appellant*

v. CA 09-2017

Jason D. Monzack

John F. Cullen, *Appellees*

REPLY BRIEF OF APPELLANT

Now comes Appellant Harold F. Chorney in the above referenced case, with property interests and without assistance of counsel.

Appellant avers that the administration of the bankruptcy case is fraught with violations of the bankruptcy statutes and that the Appellant has continually been denied his due process rights without proper notice, a fair hearing and a neutral judge.

Appellant relies upon the reasoning set forth in the attached Memorandum.

Respectfully submitted,

s/Harold F. Chorney
16 Spring Drive
Johnston, R.I. 02919
(401) 934-0536

CERTIFICATION

I hereby certify that on this ___ day of October 2009, a copy of the REPLY BRIEF OF APPELLANT was sent by first class mail to:

Jason D. Monzack
Kirshenbaum & Kirshenbaum
888 Reservoir Ave
Cranston, R.I. 02910

Gary Donahue, AUST
Office of U.S. Trustee
10 Dorrance Street
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United States Trustee
Thomas P. O'Neill, Jr.
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s/HAROLD F. CHORNEY

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND INVESTMENT CORPORATION

Harold F. Chorney, *Appellant*

v. CA 09-2017

Jason D. Monzack

John F. Cullen, *Appellees*

MEMORANDUM IN SUPPORT OF REPLY BRIEF OF APPELLANT

Now comes Appellant Harold F. Chorney in the above referenced case, with property interests and without assistance of counsel.

At a basic level, procedural due process is essentially based on the concept of "fundamental fairness." For example, in 1934, the United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental". Snyder v. Massachusetts, 291 U.S. 97, 105 (1934.) As construed by the courts, it includes an individual's right to be adequately notified of charges or proceedings, the opportunity to be heard at these proceedings, and that the person or panel making the final decision over the proceedings be impartial in regards to the matter before them. Goldberg v. Kelly, 397 U.S. 254, 267 (1970.)

Or, to put it more simply, where an individual is facing a (1) deprivation of (2) life, liberty, or property, (3) procedural due process mandates that he or she is entitled to adequate notice, a hearing, and a neutral judge.

Appellant avers that the administration of the bankruptcy case is fraught with due process violations including violations of the bankruptcy statutes. Appellant avers that the staff of the U.S. Trustee are active participants in these due process violations. They were present at the premises of Cumberland Investment Corporation in 1990 when the assets of the estate were removed and videotaped at the direction of Mr. Cullen. Subsequently staff of the U.S. Trustee appeared and testified at hearings challenging the standing of parties with assets missing from the Cullen search and seizure. Staff of the U.S. Trustee in the year 2001challenged the standing of Mr. Taft, seeking an accounting of the assets of the estate of Cumberland Investment Corporation and also continuously challenged the standing of Appellant some eight years latter to obtain an accounting of the assets of the estate and an accounting of the professional fees and other administration of the estate. Because the U.S. Trustee does not have the discretion to bypass the requirements of the Bankruptcy Code in his or her fiduciary duties involved with the administration of the case, he or she should be a captioned party in this case.

Hereto forth the U.S. Trustee's offices in both Providence, R.I. and Boston have received notice of all pleadings and correspondence by Appellant, including those involving missing and unaccounted for assets of the estate.

In previous pleadings over the past 20 years involving the Cumberland Investment Corporation case, Appellant has argued that in the administration of this case the following statues have been circumvented:

11 U.S.C. § 327(f). "The trustee may not employ a person that ...has served as an examiner in the case."11 U.S.C. §364(c)(1). "If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing may authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title.

11 U.S.C. § 704(1). "The trustee shall collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

11 U.S.C. § 704(2). "The trustee shall be accountable for all property received

11 U.S.C. §704(7). "unless the Court orders otherwise, furnish such information concerning the estate's administration as is requested by a party in interest.

11 U.S.C. §1109(b). "a party in interest, including ...a creditor may raise and may appear and be heard on any issue in a case under this chapter."

11 U.S.C. §2012(b)(2) requires... "the successor trustee to prepare, file and transmit to the United States trustee an accounting of the prior administration of the estate."

11 U.S.C. §2013(b) requires... "the clerk to prepare a summary of the public record of fees awarded to Trustees, Examiners and Professionals. A copy of the summary is submitted to the United States Trustee."

11 U.S.C. Rule 2014(a) "....The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connection with the debtor, creditors, and other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States trustee."

In addition Appellant avers that he was denied due process and fair treatment concerning procedures involved with different stages of the Final Report leading up to the Hearing of May 13, 2009 and the subsequent dismissal of the Notice of Appeal, dated June 5, 2009.

The involvement of the U.S. Trustee with the timing and submission of the Final Report itself is evidenced by Mr. Donahue's testimony at the May 13, 2009 Hearing when he stated,

> "Gary Donahue for the U.S. Trustee, Your Honor. On March 27th the United States Trustee filed a certification along with a final report on behalf of the Trustee Monzack." TR page 6, See E779.

It is because of the fiduciary responsibilities of the U.S. Trustee and the active involvement with this case that Appellant avers that the caption to this instant case include the U.S. Trustee.

Respectfully submitted,

s/Harold F. Chorney
16 Spring Drive
Johnston, R.I. 02919
401 934-0536

CERTIFICATION

I hereby certify that on this ___ day of October 2009, a copy of the REPLY BRIEF OF THE APPELLANT was sent by first class mail to:

Jason D. Monzack
Kirshenbaum & Kirshenbaum
888 Reservoir Ave
Cranston, R.I. 02910

Gary Donahue, AUST
Office of U.S. Trustee
10 Dorrance Street
Providence, R.I. 02903

United States Trustee
Thomas P. O'Neill, Jr.
Federal Office Bldg.
10 Causeway Street, Room 472
Boston, MA 02222-1043

Edward Bertozzi, Esq.
Edwards Angell Palmer & Dodge LLP
2800 Financial Plaza
Providence, R.I. 02903

s/HAROLD F. CHORNEY

APP. E

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
No.: 09-2017

IN RE: CUMBERLAND INVESTMENT CORPORATION,
Debtor

HAROLD F. CHORNEY,
Appellant

v.

JASON D. MONZACK
JOHN F. CULLEN
U.S. TRUSTEE,
Appellees

ON APPEAL FROM AN ORDER OF THE FEDERAL DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

DATED JULY 17, 2009 C.A. NO. 08-0189 ML

BRIEF OF APPELLEE,
JASON D. MONZACK

Jason D. Monzack, Esq
In his capacity as Chapter 7
Trustee of Cumberland
Investment Corporation
Kirshenbaum & Kirshenbaum
Attorneys at Law, Inc.
888 Reservoir Avenue
Cranston, RI 02910
Tel: (401) 946-3200

Dated: October 21, 2009

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SUMMARY OF CHAPTER 7 TRUSTEE'S ARGUMENT

Harold F. Chorney ("Chorney") appeals the United States District Court Order of July 17, 2009 denying his Motion for Leave to File Interlocutory Appeal of the Bench Order dated May 13, 2009 entered by Bankruptcy Court. The May 13, 2009 Order denied Chorney's Motion/Petition for Authorization to File Motion in Objection to the Final Report and Account before Distribution, Request for Compensation and Report on Claims/Proposed Distribution. Chorney filed a Notice of Appeal of the May 13, 2009 Order on June 5, 2009, well after the ten (10) day appeal period mandated by Rule 8002(a) of the Federal Rules of Bankruptcy Procedure. Accordingly, Chorney's appeal of the May 13, 2009 Order was dismissed by the Bankruptcy Court as untimely filed per its June 9, 2009 Order (Copy attached to Monzack's brief as page A-1 to ADDENDUM). The United States District Court denied Chorney's Motion for Leave to file Interlocutory Appeal "for the reasons set forth" in the Chapter 7 Trustee's Response; which included the District Court's lack of jurisdiction to consider an appeal filed out of time and Chorney's filing a motion in a District Court case that had been previously fully adjudicated.

As Mr. Chorney is ultimately seeking a judicial review of the Bankruptcy Court's Order of May 13, 2009, he cannot cure the lack of timely filing of his notice of appeal of the May 13, 2009 Order by a timely filing of an appeal to this Court of the District Court's July 17, 2009 Order. The District Court's Order of July 17, 2009 should be affirmed and Chorney's appeal dismissed as the District Court lacked jurisdiction to hear an appeal filed out of time in the Bankruptcy Court. Chorney is once again seeking to raise issues that he has repeatedly sought to raise before. As this Court has stated on previous occasions, due to the barring effect of prior final orders and judgments and to Chorney's lack of standing, Chorney is barred from raising those issues again.

ARGUMENT

I. Standard of Review

Once again Chorney is seeking to object to requests for compensation in the Bankruptcy Court and by this means to object to actions taken in the Bankruptcy Court over the last twenty (20) years. The subject appeal originated with a notice of appeal filed out of time in the Bankruptcy Court. (See page A-1 to ADDENDUM to Monzack's brief). In addition, as previously briefed before this Court, Appellee Jason D. Monzack contends that Chorney does not have standing to challenge the subject bankruptcy court order and the subsequent Order entered by the United States District Court for the District of Rhode Island on July 17, 2007 denying Chorney's Motion for Leave to File Interlocutory Appeal of the Bankruptcy Court Order of May 13, 2009. Appellee contends that as the Bankruptcy Court has now approved the Chapter 7 Trustee's Final Report and Account and all outstanding fee requests, all outstanding issues in this case have now been previously decided by prior final orders and judgments. If Chorney had standing to challenge fee awards, then abuse of discretion is the applicable standard of review. See Prebcor v. Collins (In re I Don't Trust), 143 F.3d 1 (1st Cir. 1998) (per curiam). In In re DN

Associates, 3 F.3d 512, (1st Cir. 1993) the Court stated that

> "When we scrutinize factual determinations and discretionary judgments made by a bankruptcy judge, such as may be involved in calculating and fashioning appropriate fee awards, we give considerable deference to the bankruptcy court...This observation is a reiteration of what Judge Brody noted in his affirmance of the instant bankruptcy court decision that [such] courts are traditionally granted broad discretion in determining reasonable fee awards."

Casco Northern Bank, N.A. v. DN Associates, 160 B.R. 20, 22 (D.Me. 1993) (citing In re Casco Bay Lines, Inc., 25 B.R. 747, 753 (Bankr. App. 1st Cir. 1982))."

However, Chorney does not have standing to object to fee awards. (See this Court's Judgment of August 26, 2009 at pages B-1 through B-2 to ADDENDUM to Monzack's brief)

II. Introduction: Chorney's Prior Conduct

Though this Court is familiar with Chorney's prior conduct in this case, a brief sampling of how Chorney's conduct in this case has been characterized by this and other courts follows:

In its July 3, 1991 Order denying Chorney's motion to hold examiner in contempt, the Bankruptcy Court stated in part that

> "...Chorney has deliberately and continuously action in bad faith to obstruct and to hinder the efficient

> administration of the estate, which action has been very damaging, expense-wise, to the estate and it creditors..."

In its July 2, 1992 Order entered after the bankruptcy court's hearing to determine whether Chorney should be "adjudged in contempt and sanctioned for....continuous, deliberate, and unjustified interference with the orderly progress of this bankruptcy case" the Bankruptcy Court stated in part that

> "...In prior proceedings we have found that Chorney has, inter alia, filed frivolous pleadings, willfully interfered with and obstructed the administration of the case, and generally and in bad faith abused the bankruptcy process, causing the estate and its creditors significant economic harm.... See In re Cumberland Investment Corp., BK No. 89-11051, slip op. at 1-2 (Bankr. D.R.I. July 3, 1991). Our July 3, 1991 order ...clearly expressed the Court's exasperation with Mr. Chorney's conduct..."

and that there

> "... was unfortunately an already too familiar pattern of obstructionist behavior by Mr. Chorney. For example...many frivolous pleadings were filed and extensively litigated, with the intent and effect of impeding the administration of an estate already left in shambles by Chorney...."

The Court then went on to

> "...adjudge Harold Chorney to be in continuous, willful contempt, and order him to pay $200,000.00 to the

> Trustee, as partial reimbursement for the deliberate post-petition damage he has done to creditors..."

The First Circuit's September 23, 1993 non published per curiam opinion, Chorney v. Weingarten, 7 F.3d 218, 1993 WL 372751 (C.A. 1 (R.I.)), affirmed this Court's affirmance of the July 2, 1992 bankruptcy court order finding Mr. Chorney in civil contempt. The First Circuit's opinion was issued by then Chief Judge Breyer together with Circuit Judges Selya and Boudin. The First Circuit opinion relied on the bankruptcy court's characterization of Mr. Chorney's conduct including that

> "...many frivolous pleadings were filed and extensively litigated, with the intent and effect of impeding the administration of an estate already left in shambles by Chorney. ...The most damaging consequences of Chorney's incomprehensible behavior, however, is the incredible amount of needless expense that has been heaped upon the estate, and ultimately, of course, upon creditors. ....All of this waste has been caused unnecessarily by Harold Chorney."

and that

> "...Chorney's brief here denies the accuracy of the judge's factual conclusions and argues that he is the victim of retaliation for his criticisms of improprieties by the judge, trustee and examiner. In support of his denials and blame shifting, however, he points only to previous appellate briefs in this court and elsewhere which recite the same conclusions and to selected excerpts from the record. ....the material he offers barely provides even a glancing basis for his factual

> denials and no concrete support for his accusations. The selectivity of his citations, incoherent or indistinct purposes for many record references, and his repeated blurring of temporally distinct events, only serves to confuse and obfuscate the issues."

On November 3, 2004 the Bankruptcy Court's Order stated in part that

> "...Chorney's hyperactivity and ludicrous conduct throughout this case is marked by his incessant acts of bad faith and abuse of the system from the inception of this bankruptcy in 1989. Very early on, it was determined that "Chorney has deliberately and continuously acted in bad faith to obstruct and to hinder the efficient administration of the estate, which action has been very damaging, expense-wise, to the estate and its creditors."

In re Cumberland Investment Corp., BK No. 89-11051, slip op. at 1-2 (Bankr.D.R.I. July 3, 1991). As a result, Chorney was prohibited from intervening or "otherwise participat[ing] in proceedings relating to sales or other disposition of estate assets." Id. In addition, in 1992 a civil contempt sanction was imposed in the amount of $200,000.00 against Chorney on account of his bad faith and abuse of the bankruptcy process. In re Cumberland Investment Corp., Bk No. 89-11051, slip op. at 1-2 (Bankr. D.R.I. July 2, 1992), aff'd, 7 F. 3d 218 (1st Cir. 1993), cert denied, 510 U.S. 1200 (1994). This sanction was calculated to reimburse the estate for just a part of the unnecessary expense occasioned by Chorney's aberrant behavior. Id. at 4. Obviously undeterred by this sanction, Chorney continues, some twelve years later, to file frivolous pleadings which add expense and delay in the closing of this 1989 case.

By filing the instant motion and requests for admissions, Chorney has directly violated the 1991 injunction. Additionally, in January 2002, Chorney filed a similar request seeking an accounting of assets, which was denied on March 14, 2002, based on lack of standing and the 1991 injunction order. ... That decision was sustained on appeal. See In re Cumberland Inv. Corp., 2003 WL 214357 (1st Cir.), *cert denied*, 123 S.Ct. 579 (2003). Finally, in an effort to leave no stone unturned, I asked the United States Trustee to review the Trustee's Accounting to date to determine whether any of Chorney's allegations have merit. The United States Trustee responded in late August 2004 stating that she was satisfied with the Trustee's Accounting. ... .

Accordingly, because these issues have been long ago decided against Mr. Chorney, because he lacks standing, and because he is enjoined from participating in this case regarding the disposition of assets, the Trustee's request to strike the instant motion and request for admissions are GRANTED.

Also, because the instant filings are frivolous and are hindering the Trustee in performing his duty to conclude this case, it is further ordered that, effectively immediately, the Clerk of Court shall decline to accept any filings from Harold Chorney, unless such filing has first been presented to Chambers and is specifically authorized by the Court for filing. FN1 See 11 U.S.C. §105(a); see also, Mayfield v. Collins, 918 F.2d 560 (5th Cir. 1990).

In its footnote the Bankruptcy Court added

> "I considered imposing additional monetary sanctions, however, the $200,000.00 contempt sanction remains unpaid and appears to have little deterrent effect on Chorney." See 2004 WL 2616318 (Bkrtcy. D.R.I.)

III. Chorney's Present Appeal

The Chapter 7 Trustee filed his final report and account to be approved by the U.S. Trustee and the bankruptcy court. Incidental to the filing of the report, applications for fees and expenses were considered by the Bankruptcy Court. In response to submission of the final report and account before distribution with fee requests Chorney filed his Motion/Petition for Authorization to File Motion in Objection to Final Report and Account before Distribution, Requests for Compensation and Report on Claims/Proposed Distribution. After the Bankruptcy Court denied Chorney's Motion/Petition on May 13, 2009, Chorney filed his notice of Appeal on June 5, 2009. The Bankruptcy Court then dismissed Chorney's Appeal by its Order of June 8, 2009 as untimely filed. (See copy of June 9, 2009 Order attached to Monzack's brief as page A-1 to ADDENDUM)

IV. Chorney May Not Seek Review of a Court Order from Which He Filed an Untimely Appeal

Chorney ultimately seeks review of the Bankruptcy Court Order of May 13, 2009. Chorney did not file a timely appeal of that Order (See page A-1 of ADDENDUM to Monzack's brief). By not filing a timely appeal, the District Court did not have jurisdiction to consider Chorney's appeal. Rule 8002(a) of the Federal Rules of

Bankruptcy Procedure requires that a notice of appeal be filed "within ten (10) days of the entry of the judgment, order or decree appealed from." The advisory committee notes state that "If a timely notice of appeal is not filed, no appeal may be taken later." Also see Wynn v. Reiber, 98 Fed. Appx. 32, 2004 WL 693413 (C.A. 2(N.Y.)) As Mr. Chorney filed his notice of appeal after the ten (10) day appeal period, he may not file his appeal by another means.

V. Chorney Lacks Standing

As this Court and other Courts have stated on numerous occasions, Chorney lacks standing. (See this Court's Judgment of August 26, 2009 attached to Monzack's brief as pages B-1 through B-2 to ADDENDUM) Bankruptcy standing was considered by the United State Bankruptcy Appellate Panel of the First Circuit in In re Great Road Serv. Ctr., Inc., 304 B.R. 547 (1st Cir. BAP 2004) where the court stated:

"Bankruptcy standing is narrower than Article III standing. Spenlinhauer v. O'Donnell, 261 F.3d 113, 117 (1st cir.2001); Cult Awareness Network, Inc. v. Martino (In re Cult Awareness Network, Inc.), 151 F.3d 605, 607 (7th Cir. 1998). Only a "person aggrieved" has standing to challenge a bankruptcy court order; the challenged order must directly and adversely affect the appellant's pecuniary interests. Spenlinhauer, 261 F.3d at 117-18. A "person aggrieved" is one whose property is diminished, burdens are increased, or rights are impaired by order on appeal. In re El San Juan Hotel, 809 F.2d 151, 154 (1st Cir.1987). Chapter 7 debtors generally lack standing to object to an order concerning distribution of estate assets, because chapter 7 debtors usually lack a pecuniary interest in estate assets: No matter how the estate's assets are distributed by the trustee, no assets will revert to the debtor. 11 U.S.C. §726(a) (6); Cult Awareness, 151 F.3d at 607.

...We also reject Great Road's suggestion that it has standing to assert fraud upon the court even though it is not a "person aggrieved" in the usual sense." Chorney has no pecuniary interest and therefore has no standing.

VI. The Issues Which Chorney Seeks To Raise On Appeal Have Been Previously Decided By Prior Final Orders and Judgments

This Court most recently on August 26, 2009 once again stated the barring effect of prior final orders and judgments on Chorney's attempts to raise issues previously considered by this and other Courts. (See pages B-1 through B-2 of ADDENDUM to Monzack's brief) An examination of Chorney's brief demonstrates that he is again attempting to raise those issues previously considered and disposed of by this and other Courts.

CONCLUSION

Appellee requests that this Court dismiss this appeal and affirm the District Court's Order of July 17, 2009. The history of this case clearly demonstrates Chorney's pattern of bad faith and his ignoring the many prior orders and judgments entered by this and other Courts. Chorney is seeking review of an order from which he filed an untimely appeal, he lacks standing and is barred by the effect of prior final orders and judgments from raising those issues which he once again seeks to raise.

WHEREFORE, Appellee requests that this Honorable Court enter its Order dismissing Chorney's appeal, affirming the District Court's order of July 17, 2009 and granting such other and further relief as this Court deems meet and just.

Respectfully submitted,

s/Jason D. Monzack, Esq.

Jason D. Monzack, in his capacityas
Chapter 7 Trustee, Appellee
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Attorneys at Law, Inc.
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(401) 943-8097 Fax

CERTIFICATION

I, the undersigned, hereby certify that on the 21st day of October, 2009, I sent a copy of BRIEF OF APPELLEE, Jason D. Monzack, in his capacity as Chapter 7 Trustee of Cumberland Investment Corporation by first class mail to the Edward J. Bertozzi, Jr., Esq., 2800 Financial Plaza, Providence, RI 02903, U.S. Trustee, Room 910, 10 Dorrance Street, Providence, RI 02903, Gary Donahue, Esq., U.S. Trustee's Office, 10 Causeway Street, Boston, MA 02222 and Harold Chorney, 16 Spring Drive, Johnston, RI 02919.

/s/ Crystal Robillard

ADDENDUM

A. June 9, 2009 Order of the Bankruptcy Court for the District of Rhode Island A-1

B. August 26, 2009 Judgment of United States Court Of Appeal for the First Circuit, Chorney v. Jason D. Monzack, No. 09-1117 B-1 through B-2

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF RHODE ISLAND

--x

Cumberland Investment Corporation: BK No.89-11051

Debtors(s) Chapter 7

--x

ORDER DISMISSING APPEAL [Doc.# 1065]

On May 13, 2009, the Court entered an order [document #1059] denying Harold F. Chorney's Motion for authorization to file a motion and memorandum objecting to the trustee's final report and account before distribution. Thereafter, twenty-three days later, on June 5, 2009, Harold F. Chorney filed a Notice of Appeal to the United States District Court for the District of Rhode Island.

Rule 8002(a) of the Federal Rules of Bankruptcy Procedure provides that a notice of appeal must be filed "within 10 days of the date of the entry of the judgment, order, or decree appealed from."

Accordingly, as the notice of appeal files on June 5, 2008 [document #1065] was file out of time, it is hereby ORDERED that the appeal [doc. #1065] is DISMISSED.

ORDER:
_cal
Deputy Clerk

ENTER:
s/Arthur N. Votolato
U.S. Bankruptcy Judge
Date: 6/9/2009
EOD: 6/9/2009

United States Court of Appeals

For the First Circuit

No. 09-1117

IN RE: CUMBERLAND INVESTMENT CORPORATION,

Debtor,

HAROLD F. CHORNEY,

Appellant,

v.

JASPN D. MONZACK, ET AL.,

Appellees.

Before

Boudin, Selya and Lipez,

Circuit Judges.

JUDGMENT

Entered: August 26, 2009

Substantially for the reasons set forth in the district court's decision dates December 18, 2008, we affirm the dismissal of this appeal from orders of the bankruptcy court. We add only the following comments.

In 2003, in a matter arising out of the same underlying case, we upheld the dismissal of an earlier appeal from appellant "for reasons of standing and the barring effect of prior final orders and judgments." In re Cumberland Inv. Corp., 2003 WL 21435745, at *1 (1st Cir. 2003)(per curiam). As the district court explained, these same rationales remain fully applicable here, where similar allegations about missing assets are again voiced. That some of the assets in question may have been owned by appellant personally, rather than by the debtor corporation, does not call for a different result. Not only is this allegation unsupported, but it either was or could have been raised years ago.

Nor does appellant explain how approval of the attorney's fees application - - the underlying matter before the bankruptcy court - - would "adversely" affect his "pecuniary interests." Spenlinhauer v. O'Donnell, 261 F.3d 113, 118 (1st Cir. 2001). This is particularly so given that a $200,000 contempt sanction imposed against appellant earlier in these proceedings remains unpaid.

On a separate matter, appellant had moved "for leave to file interlocutory appeal of the bench order dated May 13, 2009." This court lacks jurisdiction, absent certification under 28 U.S.C. § 158(d)(2), to entertain appeals directly from the bankruptcy court. The motion is thus denied, but in light of subsequent developments, such denial is without prejudice to the matter being pursued in Appeal No. 09-2017.

Affirmed. The motion for leave to file interlocutory appeal is denied without prejudice.

By the Court:

s/ Richard Cushing Donovan, Clerk.

Cc:

Edward J. Bertozzi

Harold F. Chorney

Jason D. Monzack

US Trustee

APP. F

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND INVESTMENT CORPORATION

Debtor

Harold F. Chorney, Appellant

v. CA 09-2017

Jason D. Monzack,

John F. Cullen,

U. S. Trustee Appellees

APPELLANT'S MOTION AND MEMORANDUM IN APPEAL OF THE BENCH ORDER DATED MAY 13, 2009

Now comes Harold F. Chorney, a pro se Appellant with property interests and an interested party in the above captioned matter from November 8, 1989 until May 12, 2009, and respectfully requests the Court to take notice of the continuous lack of notice and due process violations in this case.

Appellant also respectfully requests the Court to overturn the May 13, 2009 decisions of the Bankruptcy Court in Ca. No. 89-11051 and to determine and order any other remedy it metes just and fair.

Appellant respectfully and especially directs the attention of the Court to the listing of numerous and egregious due process and notice violations at the conclusion of this motion and memorandum.

BRIEF EXHIBITS

Appellant, in the interest of uniformity and orderly presentation, has identified Exhibits heretofore sent to the Circuit Court in 9 bound volumes in the following cases: Ca. No. 07-8038, 09-1119 and 09-2017. Each exhibit has an Exhibit Letter and/or an "E" numbered page number.

REQUEST FOR ORAL ARGUMENT

The Appellant, Harold F. Chorney, respectfully requests oral argument. This instant appeal brief deals with the criteria for being a party in interest and with the threshold jurisdictional issue of standing.

Appellant's personal knowledge and oral presentation of certain facts in dispute concerning the set of circumstances of this case would be beneficial to the Court.

A. JURISDICTION

The Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the District Courts of the United States.....28 U.S.C.A. §1291 and interlocutory orders of the District Courts.....28 U.S.C.A. §1292, when they have a final and irreparable effect on the rights of the parties. See Cohen v. Beneficial Industrial Loan Corporation, 69 S. Ct. 1221, 1225, 1949.

B. Question of Finality of the July 17, 2009 District Court Order

On July 17, 2009, the District Court summarily denied Appellant's MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009 and fully adopted the arguments of Appellee Monzack. If the District Court's Order is upheld as either a final order or an interlocutory order , Appellant's rights to be heard will be irreparably affected. See Cohen v. Beneficial Industrial Loan Corporation, 69 S. Ct. 1221, 1225, 1949.

C. Challenges to the Bankruptcy Order

"The finality of the bankruptcy order mandates that ...any future challenges to that order will be either in the form of appeal or amendment of the judgment." Cert. denied, 498 U.S. 819, 111 S. Ct. 64, 112 L.Ed. 2d 39 (1990), an appeal of Hendrick v. Avent, 891 F.2d 583, Fifth Cir.

According to F.R.C.P., Rule 60(b), "Upon motion and upon such terms as are just, the court may relieve a party....from a final judgment, order, proceeding for the following reasons....Rule 60(b)2 newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); Rule 60(b)(3) fraud...misrepresentation, or other misconduct of the adverse party; Rule 60(b)(6) any other reason justifying relief from the operation of the judgment. (Arguments concerning Rule 60(b) are listed in Brief of Appellant in Ca. No. 08-189 ML, CA. No. 08-189ML.)

In addition, for a collateral order to be reviewable pursuant to Cohen as cited in Digital Equiptment Corp v. Desktop Direct, Inc., 511 U.S. 863 (1994), it must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment. The party seeking appellate review must establish that the order meets this three-part test (See Kaufman v. Checkers, 122 F 3d 892, 894, 11th Cir 1997.)

The "effectively unreviewable" prong requires that the party seeking appellate review demonstrate the order in question effect "rights that will be irretrievably lost in the absence of an immediate appeal." (See Richardson – Merrell, Inc v. Koller, 472 U.S. 424, 430-431 1985.)

D. STATEMENT OF THE ISSUES

1. Whether the bankruptcy court's finding in fact that Appellant Chorney is not a "party in interest" is clear error?

2. Whether the Bankruptcy Court officials have implemented unfair procedures, circumventing bankruptcy code statutes, thus denying Appellant due process of law and equal protection under the law?

3. Whether the Trustees have failed to account for the estate assets and address the missing estate assets and personal assets of Appellant?

4. Whether the Bankruptcy Court abused its discretion by granting the Cullen Billing without having a hearing on the objections?

5. Whether the Bankruptcy Court abused its discretion by granting the Final Report inferring that the estate is fully administered in accordance with Rule 5009?

6. Whether the failure to disclose discovery to Appellant, including but not limited to, an accounting of the Gross Receipts and Disbursements prior to the Conversion Date of 12/22/93 as contained in the Memorandum of the Motion in Objection to the Final Report and Account before Distribution, can constitute misconduct within the purview of Rule 60(b)(3)? See Anderson v. Cryovac, Inc., 862 F2d 910, 923. (1st Cir. 1988.)

7. Whether Appellant can obtain a fair hearing when the Bankruptcy Court has implemented unfair sanctions precluding Appellant access to the courts?

8. Whether Judge Votolato has engaged in conduct prejudicial to the effective and expeditious administration of the case, thus committing wrongs against the institutions set up to protect and safeguard the public?

BRIEF OF THE APPELLANT

I. GENERAL BACKGROUD

Appellant has presented various pleadings related to this current appeal including:

(1) Petitioner's Motion and Memorandum in Support of Motion to Appeal and/or Amend Bankruptcy Order, dated November 3, 2004 to the First Circuit Court of Appeals. (date of Petition was November 1, 2007)

(2) Appellant Harold F. Chorney Response to Show Cause Motion as to Why Appeal Should Not Be Dismissed, dated February 28, 2008 in Ca. No. 07-8038.

(3) Appellant Harold F. Chorney Supplemental Response to Show Cause Motion as to Why Appeal Should Not Be Dismissed entered 2/28/08 (submitted on April 14, 2008 in Ca. No. 07-8038).

(4) Brief of Appellant in Ca. No. 08-189 ML of Order dated November 4, 2004 and May 8, 2008 and Bench Decision of May 7, 2008 (dated August 19, 2008)

(5) Supplemental Brief of Appellant and Motion for Reconsideration in Ca. No. 08-189ML (submitted on December 27, 2008).

(6) Appeal Brief from Judgment of Federal District Court For the District of Rhode Island Ca. No. 08-189ML in Ca. No. 09-1117 (submitted on March 27, 2009).

A history of issues presented to this court were listed on pages 2-5 of the March 27, 2009 Brief to this Court in CA. No. 09-1117.

It appears as if the Appellant did not argue standing in relation to the Court Order, the 364(c)(1) Agreement dated December 12, 1990, (See E282-296.) a contract in which Appellant was a signatory, had a pecuniary interest, but never received an accounting. (This issue was more fully briefed in CA. No. 02-1976 before the First Circuit Court of Appeals in RE: Harold F. Chorney vs. Republic Credit Corp. I.)

This contract was the basis of advancing money to Eastland Bank to repay a $75,000 advancement to Mr. Cullen for the removal of the assets on August 17, 1990 and the payment of $84,000 in professional fees to Mr. Bertozzi and Mr. Weingarten. (See par. (e) on E294) Appellant avers that this contract was broken when Appellees did not abide by the terms and conditions listed in paragraph (d) on page 13, E-294 which was the subject of Appellant's Motion to Hold the Examiner in Contempt in U.S. Court of Appeals cases CA. No. 1780-1782.)

Many of the 8 issues listed above have been argued in the various pleadings already presented to this court.

This instant appeal seeks to clarify and summarize Appellant's arguments related to the continuous denial of lack of notice and due process.

II. SUMMARY OF APPELLANT'S ARGUMENT

Before there can be a proper distribution of estate assets, there should be a full and accurate accounting of estate assets.

There must be a full and accurate accounting of the estate of Cumberland Investment Corporation and it must be provided by the case Trustee, Jason Monzack.

There must be a full and accurate accounting of the assets seized by Mr. Cullen on August 17, 1990 and August 23, 1990, as well as those sold, those abandoned and those missing.

There must be a full and accurate accounting of the funding advanced to Appellee Cullen to administer the estate in accordance with the 364(c)(1) Agreement, of which the Appellant is a signatory (See E282-296), and Order signed on December 12, 1990. (See Rule 2012(b)(2) which requires the successor trustee to prepare, file and transmit to the United States trustee an accounting of the prior administration of the estate.)[1]

---

[1] On April 14, 2009 Appellant requested a copy of the accounting of the prior administration of the estate. (See E702.) In response Gary L. Donahue, Assistant U.S. Trustee sent Appellant the attached "Interim Report and Account of Receipts and Disbursements" in which Edward J. Bertozzi on July 21, 1992 received $78,180.35 for Eastland Bank POST-PETITION LOAN PAYMENT, and Mr. Bertozzi on Sept 24, 1992 received $50,000.00 for Eastland Bank POST-PETITION LOAN PAYMENT. (See E715-723.) Note: Trustee's report states FINAL not INTERIM

There must be a full and accurate accounting of the fees paid to Trustees, Examiners and Professionals (See Rule 2013(b) which requires the clerk to prepare a summary of the public record of fees awarded to Trustees, Examiners and Professionals. A copy of the summary is supposed to be submitted to the United States Trustee) and other disbursements with estate assets.

Appellant has a right to said accounting as a "party in interest". In addition Appellant is a "person aggrieved." Since Appellant's rights have been impaired by a manipulation of the docket and lack of proper notice, Appellant has a pecuniary interest and has standing to plead a fraud on the court. There are no constitutional or prudential barriers to Appellant's standing in this case as has been argued in Appellant Brief. (See Appellant Brief in Ca. No. 09-1117, dated March 27, 2009 on pages 26-29.)

III. BACKGROUND OF U.S. TRUSTEE'S INVOLVEMENT

Appellant has been before this court with two related groups of proceedings. There have been appeals related to a civil bankruptcy case, Ca. No. 89-11051ANV, and a related criminal case Ca. No. 93-099P. A lengthy Designation of the Record was present to this court in relation to Ca. No. 02-1976, and also Ca. No. 09-1117, which Appellant wishes to incorporate into this pleading.

Appeal No. 02-1976 was denied by the Circuit Court and an appeal of this decision was not granted certiorari by the Supreme Court of the United States. Appellant named the U.S. Trustee as a party to the Supreme Court case based upon the Trustee's active involvement with cases listed above as well as the criminal referral.

On May 30, 1990, the Criminal Referral Form to Executive Office of U.S. Trustees was made by the Examiner, Mr. Weingarten, who upon information and belief was advanced money by Eastland Bank. This took place prior to the Trustee Cullen being appointed by the U.S. Trustee and the removing of the assets on August 17, 1990 in the context of both civil and criminal investigations.

The activity of the U.S. Trustee's office in this case includes their presence in 1990 on the premises of Cumberland Investment Corporation when the assets of the estate of Cumberland Investment Corporation and the personal assets of Appellant were inventoried, videotaped and removed. Subsequently staff of the U.S. Trustee have appeared and testified at hearings challenging the standing of parties whose assets are missing, seeking an accounting of the Cullen search and seizure.

It should be especially noted that the U.S. Trustee was contemporaneously serviced on both the so called "missing" Bertozzi billing, (See Exhibit W, Vol. III, E256-E281) and the 9/26/91 Cullen billing, (See Exhibit V, Vol. II, E247-E255.) which is different from the October 26, 2007 billing. (See Exhibit U, Vol. II, E239-E246.)

It should be especially noted that the Executive Office of U.S. Trustee's never undertook or performed an investigation of the missing assets. (See letters to U.S. Trustees in Boston and Providence, both dated September 13, 1994, E124-E125.)

Upon information and belief, no referral was made by the U.S. Trustee for such an investigation. (See page 12, of Supplemental Response to Show Cause Motion as to Why Appeal Should Not Be Dismissed entered on 2/28/08 in Ca. No. 07-8038.)

In addition, no referral was made in response to the letter sent by the Creditors' Committee on July 6, 1990, to Ms. Patricia Antonelli at the U.S. Trustee's Office concerning missing assets of the estate of Cumberland Investment Corporation. (See E817.)

Subsequently the chairman of the Creditors' Committee, Terry McKenna, who was seeking an investigation, was threatened by Ms. Antonelli. (See Par. #5, E806.) The Affidavit of Mr. McKenna, dated July 14, 2004, indicates methods in which the composition of the creditors' committee was manipulated to oust the Appellant as Debtor in Possession and take control of the assets of the corporation. (See pages E803-E824.)

The history of this case demonstrates that seeking an accounting in this case seems to result in "retaliation" by officials of the Bankruptcy Court. Many of the events related to the sanctions imposed upon Appellant, including the November 3, 2004 sanction, refer to events ruled upon in several past appeals in which Appellant was seeking an accounting of the assets seized, those sold and those remaining.

Claims of missing assets were not investigated by the U.S. Trustee's Office or referred for further investigation as stated by Mr. Monzack when he said, "....and every issue that Mr. Chorney had raised in the past was referred to somebody for investigation and none of those bodies, be it this court, be it the U.S. Attorney's Office, be it the FBI, has ever reported back to me and said that there was any grounds for these claims that were being made." (See E370, TR March 27, 2008.) Yet an F.O.I.A to the Executive Office of U.S. Trustee's shows no investigation ever took place. (See E383.)

IV. APPELLANT IS A PARTY IN INTEREST

Appellant argues that he is and always was an interested party in this twenty year old case and Appellant has been serviced as such by the Bankruptcy Court. Furthermore, Appellant believes that the May 13, 2009 bench decision of the Bankruptcy Court Judge Votolato, stated in his whimsical flourish,

"You've been determined to be not an interested party. And I'm stating that as the law of this case, okay." TR 5/13/09 pg 7 (See E-780.)

was arbitrary, erroneous, and fabricated to both disqualify Appellant from objecting to the Final Report as a party in interest and to circumvent the fact that the Trustee by statute has a duty to account for the assets of the estate. In re Peachtree Lane Assocs., Ltd., 188 B.R. 815, 824 (N.D. Ill. 1995) **(comprehensive examination** of the precedent on what satisfies the standard for being a party in interest); *accord* In re Johns-Manville Corp., 36 B.R. 743 (Bankr. S.D.N.Y. 1984) (party in interest "must be determined on an ad hoc basis"). It certainly includes creditors and shareholders but may not include a party with an indirect or remote interest. It is "'generally understood to include all persons whose pecuniary interests are directly affected by the bankruptcy proceedings.'"

There can be little doubt that Judge Votolato's ruling that Appellant is not a party in interest is clearly erroneous. Appellant satisfies the criteria listed above. He is the majority shareholder of Cumberland Investment Corporation with about a 95 percent ownership of this company.

In addition, Appellant has all sorts of pecuniary interests in the estate of Cumberland Investment Corporation, such as : (1) Trustee claims Appellant owes the estate over $200,000; (2) Corporate assets contained in transcripts have disappeared; (3) Personal property of Appellant has been seized by the Chapter 11, Trustee Mr. Cullen and remains unaccounted for. (4) The 364(c)(1) Agreement was entered into by Appellant to loan money to the Trustee, 12/12/90.

APPELLANT IS AN AGGRIEVED PARTY

Courts have widely agreed that the person aggrieved doctrine limits standing to appeal a bankruptcy court order to those individuals who have a financial stake in the order being appealed. A person has a financial stake in the order when that order "diminishes their property, increases their burdens or impairs their rights. In re Troutman, 286 F.3d 359 at 364, 6th Cir. 2002. See In re Thompson, 965 F.2d 1136, 1142 n. 9. 1st Cir. 1992, where standing is granted when the challenged order directly and adversely affects an appellant's pecuniary interests.

The order that Chorney was not a party in interest impairs his rights to question the final report and to seek an accounting of the assets of the estate and an accounting of the 364 agreement dated December 12, 1990, in which he is a signatory.

The order impairs the rights of Appellant to challenge the restitution order in the criminal case which is based upon the value of the assets in bankruptcy proceedings.

The order impairs the rights of Appellant to obtain an accounting of monies advanced to professionals under the 364 Agreement and to challenge the basis for the billing of Professionals using these funds to pay for hours billed by Trustees and their attorneys, who have failed to account for the estate assets as required by statute and to address the claims of missing assets.

V. TRUSTEES HAVE FAILED TO ACCOUNT FOR THE ESTATE ASSETS AND ADDRESS THE MISSING ASSETS

The case law listed below highlights the duties of the trustee to account for the assets of the estate. In re Refco, Inc, 336 BR. 193 (Bankr. S.D.N.Y. 2006)

"Judge Drain identified three relevant propositions that have been applied in interpreting a trustee's duties under 704(7): (1) the duty to furnish information is "fairly extensive" in light of the overriding duty to keep parties informed, with the burden generally being on the trustee to demonstrate why information should not be disclosed; (2) the duty to provide information is not unlimited, though, and a trustee can obtain a protective order if disclosure would result in waiver of attorney-client privilege or require disclosure of proprietary or confidential information; and (3) the trustee's right to a protective order is informed by the trustee's fiduciary duties, and whether the purpose of the requesting party is inconsistent with those duties (for instance, if the requesting party is seeking information in order to obtain an undue advantage over another party). Judge Drain found each of those considerations to be applicable to construing a committee's obligation to provide access to information under 1102(b)(3)(A)"

The burden is on the Trustee to state why the information requested by Appellant and other parties in this case has not been produced. It has been the position of Judge Votolato and the U.S. Trustee at all stages of this case to circumvent the statutes defining the duties of the Trustee and defying case law to support the Trustee in his non production of an accounting of the estate assets.

Consequently, the $200,000 fine, in so called "compensatory damages," was derived from the billings of professionals to defend actions from Appellant and others seeking to obtain an accounting of the assets of the estate. This accounting should have been given to Appellant according to the statutes listed above in interpreting the trustee's duties under 704(7). However when Appellant did not receive said accounting, he filed motions to obtain said accounting and discovery related to said accounting.

VI. APPELLANT PLEADS A FRAUD ON THE COURT

The Trustees and other officers of the court in this twenty year old case, with fiduciary responsibilities to the court and to the assets of the estate, continue to not perform their duties in accordance with statute to give an accounting of the assets and disbursements involved with the funds of the estate.

The safety net to protect the creditors through a Creditors' Committee has been manipulated. (See McKenna Affidavit, (E803-825.) The safety nets in place to supervise the fiduciary responsibilities of the Trustee, namely the Bankruptcy Court Judge and the U.S. Trustee's Office, have not been deployed. Both the Judge and the Trustee have inexplicably found no problem in the fact that assets of the estate are conspicuously missing or unaccounted for or that there are dubious billings being presented by "professionals" in this case, without any meaningful breakdown as to the usage of the funds transferred to various parties like Mr. Bertozzi.

In addition, there is no meaningful list of assets transferred from Appellee Cullen to Appellee Monzack. (See E125-E127.) All of these unused safety nets have

deprived Appellant, creditors and other parties in interest proper notice and other due process concerning an accounting of the assets and administration of the estate.

The Executive Office of United States Trustees, a division of the Justice Department, has inexplicably not found any problems with the administration of the Cumberland Investment Corporation estate. (See E-147, E-383.)

Appellant must conclude, based upon the foregoing, that the judicial machinery cannot perform in its usual manner to adjudicate cases in an impartial manner (See Simon v. Navon, 116 F.3d 1, 6 (1st Cir. 1997.)

"We recently had occasion to review the scope of "fraud upon the court" in connection with the parallel provision of the rule allowing a court to entertain an independent action to relieve a party from a judgment for fraud upon the court. Geo. P. Reintjes Co. v. Riley Stoker Corp., 71 F.3d 44, 46-49 (1st Cir.1995). In that opinion, we noted the effect of Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), overruled on other grounds, Standard Oil Co. of Cal. v. United States, 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976), in expanding the range of fraud not subject to the one-year limitation to "include fraud committed by 'officers of the court.' " Id. at 47-48. We also characterized our concept of fraud upon the court in Aoude v. Mobil Oil

Corp., 892 F.2d 1115, 1118 (1st Cir.1989), as consisting of an " 'unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter' involving an officer of the court." Reintjes, 71 F.3d at 48 n. 5. We noted a sharp demarcation, saying, "In sum, perjury alone, absent allegation of involvement by an officer of the court ... has never been sufficient." Id. at 49."

Appellant has consistently claimed that the judicial process and the associated safety nets, involving officers of the court, including but not limited, to John F. Cullen, Michael Weingarten, Edward Bertozzi and Jason Monzack , have been corrupted, and the resultant is a subversion of the efforts of the court to administer the case. (See Ca. No. 07-8038, Brief filed on 11/02/2007 pages 45-55, also pages E148-E150.)

VII. LACK OF DUE PROCESS IS CONTINUOUS

"It is only where an act or omission operates so as to deprive a defendant of notice or so as to deprive him of an opportunity to present such evidence as he has, that it can be said that due process of law has been denied."

Mooney v. Holohan, 294 U.S. 103 at 112.

Appellant reiterates that the denial of due process in the Bankruptcy Court in obtaining an accounting of the assets of the estate of Cumberland Investment Corporation is one basis for the Appellant being an "aggrieved party." Appellant as a shareholder and with personal property has a pecuniary interest concerning the assets of the estate and thus has standing to raise various issues.

Appellant has argued that he has been denied due process to obtain an accounting of estate assets and that the lack of due process shows a likelihood of injury in the future, and cited City of Los Angeles v. Lyons, 461 U.S. 95 (1983). (See Brief of Appellant in Ca. No. 09-1117, dated March 27, 2009, pages 26, 27.)

Appellant presents the following information and chronology of events concerning the methods employed to deny Appellant of notice and due process:

1. On March 27, 2009, the very day that the Brief of Appellant was filed in Ca. No. 09-1117, Appellee Jason D. Monzack allegedly filed the FINAL REPORT in Bankruptcy Ca. No. 89-11051.

2. The United States Trustee, on March 27, 2009, within minutes of the filing of the FINAL REPORT, certified that report. (It was learned at the May 13, 2009 Hearing that the Final Report was indeed filed by Mr. Donahue on behalf of Mr. Monzack. See E779.)

3. According to Rule 5009 of the Bankruptcy Code,

"If a Chapter 7...trustee has filed a final report and the final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered."

To comply with Rule 5009, Appellant, who is certainly a party in interest but has been restricted in filing motions with the Clerk of the Bankruptcy Court, on April 14, 2009 sent a filing directly to Judge Votolato in accordance with the Court Order dated 11/3/04. (See E694-701.) The filing was a Motion and Memorandum in Objection to the Final Report. [Docket 1043.]

4. On April 14, 2009 Appellant mailed requests to Leonard De Pasquale, AUST to obtain an accounting of the prior administration of the case in accordance with Rule 2012(b)(2) as well as a copy of the summary of fees awarded to Trustees, Examiners and Professionals in accordance with Rule 2013(b). (See E702.)

5. On April 15, 2009 the RESTRICTED letter containing the above Motion in Objection is signed for by C. Sweeny.

6. On April 15, 2009 a Notice of Hearing was scheduled for 4/30/09 at 10:00 AM [Docket #1045] Appellant saw this on his PACER account. (See E703.)

7. There was no mention of the Cullen Application Fee stated on the Hearing Notice (See E703.) Appellant at first thought what Judge Votolato stated on page 29 of the May 7, 2008 Hearing (E-501) was being ignored:

"So we'll see you again whenever the application for Mr. Cullen's fee together with the hearing on the trustee's final report." (sic) (Please note that "sic" is indicated here by Appellant since this is the exact language from the transcript and it would seem one or two words are needed to make the sentence grammatically correct.)

At a future point in time Appellant noticed that the Court Calendar for April 30, 2009 showed #951, the fee application of John F. Cullen as one of the 8 items to be heard on the Cumberland Investment Corporation case.

8. Had Appellant not seen this Notice of Hearing on PACER, he would not have had any knowledge of the Hearing scheduled for 4/30/09, nor would Appellant have filed an OBJECTION to the FINAL REPORT on April 14, 2009.

9. On April 17, 2009, [Doc #1046] notice of April 30, 2009 Hearing sent only to John f. Cullen. (See E704-705)

10. On April 26, 2009, [Doc #1048] notice of April 30, 2009 Hearing sent to all parties in interest, including Appellant. (See E706-708.)

11. On April 28, 2009, [Doc #1049] notice of April 30, 2009 Hearing. (See E709.)

12. On April 28, 2009, [Doc #1049-1] Hearing entry states, "set in error." (See E710.)

13. On April 29, [Doc#1051-1052] Order for written position of Trustee and U.S. Trustee. (See E711-712.)

14. Had Appellant not reviewed PACER on 4/29/09, and seen that the HEARING was continued, he would have gone to said hearing on April 30, 2009. (See E713.)

15. On April 29, 2009, [Doc #1053] notice of Continued Hearing. (See E713.)

16. On April 30, 2009 Appellant receives [Doc # 1048] after the hearing would have occurred. (See E706-8)

17. On April 30, 2009 the website Calendar for 30 April 2009 from Bankruptcy Court indicated all entries "VACATED." (See E714.)

18. On May 5, 2009 Appellant receives letter from A.U.S.T. Donahue in re: "Interim Report and Account of Receipts and Disbursements" with exhibit CHAPTER 11 TRUSTEE'S FINAL REPORT AND ACCOUNT OF RECEIPTS AND DISBURSEMENTS, dated 2/24/94. (See E715-723.)

19. On May 5, 2009 [1056] Mr. Donahue files Position to Appellant's Objection to the Final Report. [1050] (See E724-734.)

20. On May 6, 2009 [1057] Mr. Monzack files Position to Appellant's Objection to the Final Report. [1050] (See E735-767.)

21. On May 11, 2009 [Doc #1056-1] **DISREGARD-SET IN ERROR*** on 5/5/2009 entry. (See E768.)

22. On May 11, 2009 Notice of Hearing [Doc #1060] on May 13, 2009 is after [Doc #1059] the Order denying the Motion in Objection to Final Report heard at this Hearing. (See E769-771.)

23. On May 11, 2009 Appellant received telephone call from clerk's office that a Hearing will be held on May 13, 2009.

24. On May 13, 2009, this is a copy of the court calendar. (See E772.)

25. On May 13, 2009 the Hearing was held and an Order [1059] denying [1050] Motion in Objection to Final Report by Interested Party by Harold F. Chorney. (See E773.)

26. On May 13, 2009 Appellant ordered a transcript of the Hearing for a 14 day delivery and was told by the clerk's office that the transcriber would contact Appellant, which they did. (See Transcript E774-793.)

27. On May 14, 2009 docket, it shows that Mr. Cullen was there under APPEARANCES. (See E794.) Mr. Cullen was not at this hearing.

28. On May 15, 2009 Notice of Hearing, dated 5/11/09 [1060] received by Appellant and presumably by other parties in interest concerning Hearing to be held on13 May 2009 two days after the hearing actually happened. (See E769-771.)

29. On May 15, 2009 [1061] Certificate of Mailing of ORDER entered May 16, 2009.

30. Between May 17, 2009 and May 26, 2009 Appellant was in South Carolina on a trip planned many months earlier.

31. On June 1, 2009, Forrest Wallace Cato wrote an Affidavit at my request concerning the lack of proper notice for Bankruptcy Court hearings, including the Hearing on May 13, 2009. (See E795-797.)

32. On June 5, 2009, Appellant received by email a copy of Transcript [1064] and by UPS on June 8, 2009 of Hearing dated May 13, 2009. (See E774-793.)

33. On June 5, 2009, Appellant hand delivered authorization to file Notice of Appeal with the Bankruptcy Court clerk. [1065] Appellant had elected the appeal be heard by the District Court. [1066] Clerk accepted check for $255.00 from Appellant. (See E798-800.)

34. On June 9, 2009, [1067] the Bankruptcy Court dismissed the appeal on the basis that the[1065] Notice of Appeal was not presented to the court within 10 day of the entry of the Final Order on May 13, 2009. A Judgment Order was issued. (See 801-802.)

35. Appellant had asked the court to be excused from appearance between June 8, 2009 and June 16, 2009 to attend his granddaughter's graduation in California. Appellant returned to Rhode Island the evening of June 16, 2009.

36. On July 2, 2009, Appellant filed Motion and Memorandum in Support of Motion for Leave to File Interlocutory Appeal to the U.S. Court for the District of Rhode Island.

37. On July 10, 2009, Appellee Mozack filed a Response to Motion for Leave to File Interlocutory Appeal.

38. On July 16, 2009, Appellant mailed Reply to Response of Mr. Monzack [Entered Docket #39 on 20 July 2009.]

39. On July 17, 2009, the District Court summarily denied Appellant's Motion for the reasons set forth in the Response of Appellee.

PLEASE TAKE NOTICE OF THE FOLLOWING DOCUMENT:

Local Rule Blank Form concerning NOTICE OF FINAL REPORT & ACCOUNT, TRUSTEE'S COMMISSION REQUEST AND CERTIFICATE OF SERVICE.

NOTE: According to this Form, Appellant and others should have had a "twenty day notice of the hearing..." (See E826.)

CONCLUSION

The Bankruptcy court is either not functioning correctly or the Appellant is being treated unfairly, or both.

There was a conspicuous lack of notice of the Hearings scheduled for April 30, 2009 and May 13, 2009. Appellant must construe this lack of notice as both blatant and intentional.

The lack of notice is but one more example of the denial of due process to Appellant and to other parties of interest. The Appellant and other parties of interest should have proper notice and ample time to prepare for Hearings concerning Objections to the FINAL REPORT of the Appellees.

The aggregate of events have had a chilling effect on Appellant and adds to his aggrieved party status. Appellant's rights have been continually impaired. This in itself is sufficient basis for Appellant to have standing and to obtain discovery and redress of his grievances.

Respectfully submitted,

s/Harold F. Chorney

16 Spring Drive

Johnston, R.I. 02919

401 934-0536

CERTIFICATION

I hereby certify that on this ______day of September 2009, I sent a copy of the above by first class mail to the following:

Edward J. Bertozzi, Jr., Esq.
Edwards Angell Palmer & Dodge LLP
2800 Financial Plaza
Providence, R.I. 02903

Jason D. Monzack
Kirshenbaum & Kirshenbaum
888 Reservoir Avenue
Cranston, R.I. 02910

Leonard DePasquale, AUST
Office of the U.S. Trustee
10 Dorrance Street
Providence, R.I. 02903

John Fitzgerald, III, Esq.
United States Trustee
Thomas P. O'Neill, Jr. Federal Office Bldg.
10 Causeway Street, Room 472
Boston, MA 02222-1043

s/______________________

HAROLD F. CHORNEY

APP. G

United States Court of Appeals

For the First Circuit

No. 09-1117

IN RE: CUMBERLAND INVESTMENT CORPORATION,

Debtor,

HAROLD F. CHORNEY,

Appellant

v.

JASON D. MONZACK, ET. AL.,

Appellees

Before

Boudin, Selya and Lipez,

Circuit Judges

JUDGMENT

Entered: August 26, 2009

Substantially for the reasons set forth in the district court's decision dated December 18, 2008, we affirm the dismissal of this appeal from orders of the bankruptcy court. We add only the following comments.

In 2003, in a matter arising out of the same underlying case, we upheld the dismissal of an earlier appeal from appellant "for reasons of standing and the barring effect of prior final orders and judgments." In re Cumberland Inv. Corp., 2003 WL 21435745, at *1 (1st Cir. 2003)(per curiam). As the district court explained, these same rationales remain fully applicable here, where similar allegations about missing assets are again voiced. That some of the assets in question may have been owned by appellant personally, rather than by the debtor corporation, does not call for a different result. Not only is this allegation unsupported, but it either was or could have been raised years ago. Nor does appellant explain how approval of the attorney's fees application - - the underlying matter before the bankruptcy court - - would "adversely" affect his "pecuniary interests." Spenlinhauer v. O'Donnell, 261 F.3d 113, 118 (1st Cir. 2001). This is particularly so given that a $200,000 contempt sanction imposed against appellant earlier in these proceedings remains unpaid.

On a separate matter, appellant has moved "for leave to file interlocutory appeal of the bench order dated May 13, 2009." This court lacks jurisdiction, absent certification under 28 U.S.C. § 158(d)(2), to entertain appeals directly from the bankruptcy court. The motion is thus denied, but in light of subsequent developments, such denial is without prejudice to the matter being pursued in Appeal No. 09-2017.

Affirmed. The motion for leave to file interlocutory appeal is denied without prejudice.

By the Court:

s/Richard Cushing Donovan, Clerk

cc:

Edward J. Bertozzi

Harold F. Chorney

Jason D. Monzack

U.S. Trustee

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND INVESTMENT CORPORATION

Harold F. Chorney, Appellant

v. CA 09-2017

Jason D. Monzack

John F. Cullen, Appellees

MOTION TO MODIFY CAPTION

Now comes Appellant Harold F. Chorney in the above referenced case, with property interests and without assistance of counsel, and requests that the case caption be modified to include the U.S. Trustee.

Appellant avers that the administration of the bankruptcy case is fraught with violations of the bankruptcy statutes and that the U.S. Trustee is an active participant who does not have the discretion to bypass the requirements of the Bankruptcy Code in his or her fiduciary duties involved with the administration of this case.

Appellant relies upon the reasoning set forth in the attached Memorandum.

Respectfully submitted,

s/Harold F. Chorney

16 Spring Drive

Johnston, R.I. 02919

401 934-053

CERTIFICATION

I hereby certify that on this ___ day of August 2009, a copy of the MOTION TO MODIFY CAPTION was sent by first class mail to:

Jason D. Monzack
Kirshenbaum & Kirshenbaum
888 Reservoir Ave
Cranston, R.I. 02910

Gary Donahue, AUST
Office of U.S. Trustee
10 Dorrance Street
Providence, R.I. 02903

United States Trustee
Thomas P. O'Neill, Jr.
Federal Office Bldg.
10 Causeway Street, Room 472
Boston, MA 02222-1043

Edward Bertozzi, Esq.
Edwards Angell Palmer & Dodge LLP
2800 Financial Plaza
Providence, R.I. 02903

s/HAROLD F. CHORNEY

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND INVESTMENT CORPORATION

Harold F. Chorney, Appellant

v. CA 09-2017

Jason D. Monzack

John F. Cullen, Appellees

MEMORANDUM IN SUPPORT OF MOTION TO MODIFY CAPTION

Now comes Appellant Harold F. Chorney in the above referenced case, with property interests and without assistance of counsel, and requests that the case caption be modified to include the U.S. Trustee.

Appellant avers that the administration of the bankruptcy case is fraught with violations of the bankruptcy statutes and that the staff of the U.S. Trustee are active participants who were present at the premises of Cumberland Investment Corporation in 1990 when the assets of the estate were removed and videotaped at the direction of Mr. Cullen. Subsequently staff of the U.S. Trustee appeared and testified at hearings challenging the standing of parties with assets missing from the Cullen search and seizure. Staff of the U.S. Trustee in the year 2001challenged the standing of Mr. Taft, seeking an accounting of the assets of the estate of Cumberland

Investment Corporation and also continuously challenged the standing of Appellant some eight years latter to obtain an accounting of the assets of the estate and an accounting of the professional fees and other administration of the estate. Because the U.S. Trustee does not have the discretion to bypass the requirements of the Bankruptcy Code in his or her fiduciary duties involved with the administration of the case, he or she should be a captioned party in this case.

Hereto forth the U.S. Trustee's offices in both Providence, R.I. and Boston have received notice of all pleadings and correspondence by Appellant, including those involving missing and unaccounted for assets of the estate.

In previous pleadings over the past 20 years involving the Cumberland Investment Corporation case, Appellant has argued that in the administration of this case the following statues have been circumvented:

11 U.S.C. § 327(f). "The trustee may not employ a person that ...has served as an examiner in the case."11 U.S.C. §364(c)(1). "If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing may authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title.

11 U.S.C. § 704(1). "The trustee shall collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

11 U.S.C. § 704(2). "The trustee shall be accountable for all property received

11 U.S.C. §704(7). "unless the Court orders otherwise, furnish such information concerning the estate's administration as is requested by a party in interest.

11 U.S.C. §1109(b). "a party in interest, including ...a creditor may raise and may appear and be heard on any issue in a case under this chapter."

11 U.S.C. §2012(b)(2) requires... "the successor trustee to prepare, file and transmit to the United States trustee an accounting of the prior administration of the estate."

11 U.S.C. §2013(b) requires... "the clerk to prepare a summary of the public record of fees awarded to Trustees, Examiners and Professionals. A copy of the summary is submitted to the United States Trustee."

11 U.S.C. Rule 2014(a) "....The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connection with the debtor, creditors, and other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States trustee."

In addition Appellant avers that he was denied due process and fair treatment concerning procedures involved with different stages of the Final Report leading up to the Hearing of May 13, 2009 and the subsequent dismissal of the Notice of Appeal, dated June 5, 2009.

The involvement of the U.S. Trustee with the timing and submission of the Final Report itself is evidenced by Mr. Donahue's testimony at the May 13, 2009 Hearing when he stated,

"Gary Donahue for the U.S. Trustee, Your Honor. On March 27th the United States Trustee filed a certification along with a final report on behalf of the Trustee Monzack." TR page 6, See E779.

It is because of the fiduciary responsibilities of the U.S. Trustee and the active involvement with this case that Appellant avers that the caption to this instant case include the U.S. Trustee.

Respectfully submitted,

s/Harold F. Chorney
16 Spring Drive
Johnston, R.I. 02919
401 934-0536

CERTIFICATION

I hereby certify that on this ___ day of August 2009, a copy of the MEMORANDUM TO MODIFY CAPTION was sent by first class mail to:

Jason D. Monzack
Kirshenbaum & Kirshenbaum
888 Reservoir Ave
Cranston, R.I. 02910

Gary Donahue, AUST
Office of U.S. Trustee
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10 Causeway Street, Room 472
Boston, MA 02222-1043

Edward Bertozzi, Esq.
Edwards Angell Palmer & Dodge LLP
2800 Financial Plaza
Providence, R.I. 02903

s/HAROLD F. CHORNEY

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS FOR THE FIRST DISTRICT FROM A JUDGMENT OR ORDER OF THE DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND INVESTMENT CORPORATION

CA. NO. 08-0189ML

NOTICE OF APPEAL

Notice is hereby given that Harold F. Chorney, Petitioner with property interests in the above captioned matter, without assistance of counsel, hereby appeals to the United States Court of Appeals for the First Circuit from the District Court of the District of Rhode Island ORDER dated July 17, 2009. This ORDER denies Appellant Chorney's MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009, for the "reasons set forth in the Response" of Appellee Monzack dated July 19, 2009 which claims the Interlocutory Appeal is improperly filed with the District Court and that the District Court lacks jurisdiction.

The Court of Appeals has jurisdiction of the District Court's decision. The Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the District Courts of the United States....28 U.S.C.A. §1291 and interlocutory orders of the District Courts... 28

U.S.C.A. §1292, when they have a final and irreparable affect on the rights of the parties. See **Cohen v. Beneficial Industrial Loan Corporation**, 69 S.Ct. 1221, 1225, 1949.

Respectfully submitted,

s/Harold F. Chorney

16 Spring Drive

Johnston, R.I. 02919

401 934-0536

Dated: July 20, 2009

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

IN RE: CUMBERLAND INVESTMENT CORPORATION

CA NO. 08-0189ML

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009

Now comes Harold F. Chorney, a pro se Appellant with property interests and an interested party in the above captioned matter from November 8, 1989 until May 12, 2009 and requests this court grant Appellant permission in accord with 28 U.S.C. §158 (a) (3) for leave to appeal the interlocutory bench decision of May 13, 2009, stating that Appellant is not a "party in interest" in Bankruptcy Case no. 89-11051.

BACKGROUND:

On November 1, 2007 Appellant petitioned the First Circuit Court of Appeals concerning a lack of access to the courts in Bankruptcy Case No. 89-11051.

The Circuit Court in Ca. No. 07-8038 ruled that it lacked jurisdiction in this matter since no appeal was filed concerning the November 3, 2004, Bankruptcy Court order.

Hearings and appeals and associated pleadings concerning the billing practices of professionals in the bankruptcy case and the lack of accountability concerning the assets of the estate as well as the personal assets of Appellant were next heard resulting in an appeal of the Bankruptcy Court decisions and the District Court decisions concerning whether appellant is an aggrieved party and has standing to bring these actions. These matters and associated matters are currently before the First Circuit Court of Appeals in Ca. No. 09-1117.

On March 27, 2009, the Brief of Appellant was filed in Ca. No. 09-1117.

On March 27, 2009, the U.S. Trustee filed the Final Report for Trustee Monzack and certified said report.

On April 14, 2009, Appellant sent a letter to the court with an Objection to the Final Report in accordance with 11 U.S.C. Rule 5009, stating that the estate was not fully administered. (See E 694-701.)

On April 14, 2009, Appellant wrote a letter to the U.S. Trustee concerning an accounting of the prior administration of the estate by the successor trustee in re: 11U.S.C. §2012(b)(2) and an accounting by the clerk of courts of the fees paid to professionals in re: 11 U.S.C. §2013(b). (See E702.)

On April 15, 2009, the Bankruptcy Court docketed [Doc #1050] Appellant's Objection to the Final Report. (Par. #6 above, dated 3/27/09.) (See E694-701.)

On April 15, 2009, [Doc #1045] scheduled a Hearing on the fee applications of Mr. Cullen [951] , fee applications of Mr. Monzack and the Final Report. (See E703.)

On April 17, 2009, [Doc #1046] notice of April 30, 2009 Hearing sent only to John F. Cullen. (See E704-4.)

On April 26, 2009, [Doc # 1048] notice of April 30, 2009 Hearing for all the parties in interest, including Appellant. (See E706-8.)

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On April 30, 2009 Appellant receives [Doc # 1048] *after* the hearing would have occurred. (See E706-8)

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On May 5, 2009 Appellant receives letter from A.U.S.T. Donahue in re: "Interim Report and Account of Receipts and Disbursements" with exhibit CHAPTER 11 TRUSTEE'S FINAL REPORT AND ACCOUNT OF RECEIPTS AND DISBURSEMENTS, dated 2/24/94. (See E715-723.)

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On May 13, 2009 the Hearing was held and an Order [1059] denying [1050] Motion in Objection to Final Report by Interested Party by Harold F. Chorney. (See E773.)

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On May 14, 2009 docket, it shows that Mr. Cullen was there under APPEARANCES. (See E794.)

On May 15, 2009 Notice of Hearing, dated 5/11/09 [1060] received by Appellant and presumably by other parties in interest concerning Hearing to be held on13 May 2009 two days after the hearing actually happened. (See E769-771.)

On May 15, 2009 [1061] Certificate of Mailing of ORDER entered May 16, 2009.

Between May 17, 2009 and May 26, 2009 Appellant was in South Carolina on a trip planned many months earlier.

On June 1, 2009, Forrest Wallace Cato wrote an Affidavit at my request concerning the lack of proper notice for bankruptcy court hearings, including the Hearing on May 13, 2009. (See E795-797.)

On June 5, 2009, Appellant received by email a copy of Transcript [1064] and by UPS on June 8, 2009 of Hearing dated May 13, 2009.

On June 5, 2009, Appellant hand delivered authorization to file Notice of Appeal with the Bankruptcy Court clerk. [1065] Appellant had elected the appeal be heard by the District Court. [1066] Clerk accepted check for $255.00 from Appellant. (See E798-800.)

On June 9, 2009, [1067] the Bankruptcy Court dismissed the appeal on the basis that the[1065] Notice of Appeal was not presented to the court within 10 day of the entry of the Final Order on May 13, 2009. A Judgment Order was issued. (See 801-802.)

Appellant had asked the court to be excused from appearance between June 8, 2009 and June 16, 2009 to attend his granddaughter's graduation in California. Appellant returned to Rhode Island the evening of June 16, 2009.

On June 18, 2009, Appellant filed MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF BENCH ORDER DATED MAY 13, 2009 to the First Circuit in Ca. No. 09-1117.

On June 29, 2009, Appellee Monzack filed RESPONSE TO HARLD F. CHORNEY'S MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009.

DISCUSSION

There is a long history in Bankruptcy Case Number 89-11051 concerning lack of notice, manipulation of the docket and other due process violations. Some bizarre occurrences have been recorded concerning the Hearings for April 30, 2009 and May 13, 2009 as listed above concerning the billings and accounting of the estate. There were Hearings "Set in error" and telephone calls on May 11, 2009 that there was a Hearing in two days but no written notice of the hearing was received until two days after the hearing was held. When I asked the clerk on May 11, 2009 about Mr. Cullen's billing being scheduled for the Hearing, it took a while for the clerk to respond that Mr. Cullen's billing was indeed scheduled for that Hearing. The strangest of all was Mr. Cullen being listed under APPEARANCES at the May 13, 2009 Hearing on the May 14, 2009 Docket when he was not in the court room at all. Subsequently, that section of the docket disappeared from the docket altogether. Then, there were conversations with Mr. Cato concerning Notices of Hearings Cato was receiving after the Hearings had already been held. I asked Mr. Cato to write me an Affidavit concerning this.

When Appellant left for a trip to South Carolina on May 17, 2009, he had not received any Final Order in the mail concerning the Hearing on May 13, 2009. During the trip Appellant periodically checked on the status of the Transcript and pleadings related to the Hearing on May 13, 2009. Upon returning from the trip on May 26, 2009 there was no Final Order at his home. There is always the possibility that other parties may have misplaced Docket #1059 but I do not have a copy of that order with exception of the order printed from the court docket on PACER.

Appellant was waiting for the Transcript to arrive to file his Notice of Appeal to include both the Final Order and the bench decision of the court that Appellant was not a party in interest. Appellant was in the process of preparing the Designation of the Record and the Statement of the Issues.

ARGUMENT:

Whether the court deems some impropriety was done in relation to the dismissal of the Notice of Appeal, Appellant in arguing the fact that he is a party in interest is certainly the threshold issue concerning the due process violations in this case.

APPELLANT IS A PARTY IN INTEREST

Appellant argues that he is and always was an interested party in this twenty year old case.

When responding to questions by the Court Chorney stated that, "I'm a party in interest---" the Court then inferred that other courts have ruled that Chorney was not a party in interest by stating that, ….it's been ruled that you…that it has been decided many times, not just by me, but by District and First Circuit Court of Appeals, and I guess by implication, even the United States Supreme Court…(See TR 5/13/09 pg 4, E-777.)

Finally the inference that Chorney was not a party in interest becomes the "law of this case."

"You've been determined to be not an interested party. And I'm stating that as the law of this case, okay." TR 5/13/09 pg 7, E-780. Appellant believes that the May 13, 2009 bench decision of the Bankruptcy Court stating that he was not an interested party was erroneous and fabricated to first disqualify Appellant from objecting to the Final Report as a party in interest and secondly to circumvent the fact that the trustee by statute has a duty to account for the assets of the estate. In re Peachtree Lane Assocs., Ltd., 188 B.R. 815, 824 (N.D. Ill. 1995) (comprehensive examination of the precedent on what satisfies the standard for being a party in interest); *accord* In re Johns-Manville Corp., 36 B.R. 743 (Bankr. S.D.N.Y. 1984) (party in interest "must be determined on an *ad hoc* basis"). It certainly includes creditors and shareholders but may not include a party with an indirect or remote interest. It is "'generally understood to include all persons whose pecuniary interests are directly affected by the bankruptcy proceedings.'"

There can be little doubt that Appellant satisfies the criteria listed above. He is the majority shareholder of Cumberland Investment Corporation with about a 95 percent ownership of this company. In addition, Appellant has all sorts of pecuniary interests in the estate of Cumberland Investment Corporation ranging from the Trustee claiming that Appellant owes the estate over $200,000 to having personal property seized by the Chapter 11, Trustee Mr. Cullen.

TRUSTEES HAVE FAILED TO ACCOUNT FOR THE ESTATE ASSETS AND ADDRESS THE MISSING ASSETS

The case law listed below highlights the duties of the trustee to account for the assets of the estate.

In re Refco, Inc, 336 BR. 193 (Bankr. S.D.N.Y. 2006)

"Judge Drain identified three relevant propositions that have been applied in interpreting a trustee's duties under 704(7): (1) the duty to furnish information is "fairly extensive" in light of the overriding duty to keep parties informed, with the burden generally being on the trustee to demonstrate why information should not be disclosed; (2) the duty to provide information is not unlimited, though, and a trustee can obtain a protective order if disclosure would result in waiver of attorney client privilege or require disclosure of proprietary or confidential information; and (3) the trustee's right to a protective order is informed by the trustee's fiduciary duties, and whether the purpose of the requesting party is inconsistent with those duties (for instance, if the requesting party is seeking information in order to obtain an undue advantage over another party). Judge Drain found each of those considerations to be applicable to construing a committee's obligation to provide access to information under 1102(b)(3)(A)"

The burden on the Trustee to state why the information requested by Appellant and other parties in this case has not been produced has been supported by Judge Votolato and the U.S. Trustee's office at all stages of this case.

CONCLUSION:

Appellant is certainly a party in interest and has been prevented by unfair procedures in obtaining information to prove his case. Statutes have been circumvented by officers of the court so that Appellant is denied the information required to prove his case. In doing so, Appellant has been denied equal protection under the law.

WHEREFORE, Appellant requests this honorable court grant leave for Appellant to file an Interlocutory Appeal or any other remedy it metes as just and fair.

Respectfully Submitted,

s/Harold F. Chorney, Pro Se
16 Spring Drive
Johnston, R.I. 02903
(401) 934-0536

CERTIFICATION

I hereby certify that on this ______day July 2009, I sent a copy of the above by first class mail to the following:

Arthur N. Votolato, Judge
380 Westminster Mall, 6th Floor
Providence, R.I. 02903

Edward J. Bertozzi, Jr.
Edwards Angell Palmer & Dodge LLP
2800 Financial Plaza
Providence, R.I. 02903

Jason D. Monzack
Kirshenbaum & Kirshenbaum
888 Reservoir Avenue
Cranston, R.I. 02910

Leonard DePasquale, AUST
Office of the U.S. Trustee
10 Dorrance Street
Providence, R.I. 02903

John F. Cullen
Law Office of John F. Cullen, PC
17 Accord Park Drive, Ste 103
Norwell, MA 02061

United States Trustee
Thomas P. O'Neill, Jr. Federal Office Bldg.
10 Causeway Street Room 472
Boston, MA 02222-1043

s/HAROLD F. CHORNEY

UNITED STATES FEDERAL DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

IN RE: CUMBERLAND INVESTMENT CORPORATION

CA NO. 08-189ML

MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009

Now comes Harold F. Chorney, a pro se Appellant with property interests and an interested party in the above captioned matter from 1989 until May 12, 2009 and requests this court grant Appellant permission in accord with 28 U.S.C. §158(a)(3) for leave to appeal the bench decision of May 13, 2009, stating that appellant is not a "party in interest" in bankruptcy case no. 89-11051.

Appellant state for cause those reasons why the appeal of this bench decision should be allowed. Appellant relies on those reasons as stated in the attached MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE AN INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009.

Respectfully Submitted,

s/Harold F. Chorney, Pro Se
16 Spring Drive
Johnston, R.I. 02903
(401) 934-0536

UNITED STATES FEDERAL DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

IN RE: CUMBERLAND INVESTMENT CORPORATION

CA NO. 08-189ML

REPLY TO TRUSTEE MONZACK'S RESPONSE TO MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009

Now comes Harold F. Chorney, a pro se Appellant with property interests and an interested party in the above captioned matter from 1989 until May 12, 2009 and requests this court grant Appellant permission in accord with 28 U.S.C. §158 (a) (3) for leave to appeal the bench decision of May 13, 2009, stating that Appellant is not a "party in interest" in bankruptcy case no. 89-11051.

Appellant states for cause those reasons why the appeal of this bench decision should be allowed. Appellant relies on those reasons as stated in the attached MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE AN INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009, dated July 2, 2009 as well as those listed below.

INTRODUCTION:

On June 5, 2009, Appellant filed a **NOTICE OF APPEAL** to the United States District Court for the District of Rhode Island from *both* the bench decision of May 13, 2009 stating that Chorney is not a party in interest and the final judgment [Doc #1059] dated May 13, 2009 of the Bankruptcy Court for the District of Rhode Island, denying [Doc #1050]. [Doc #1050] is dated April 14, 2009 and entitled MOTION AND MEMORANDUM IN SUPPORT OF MOTION IN OBJECTION TO THE FINAL REPORT AND ACCOUNT BEFORE DISTRIBUTION, REQUEST FOR COMPENSATION AND REPORT ON CLAIMS/PROPOSED DISTRITUION [Doc #1043].

DISCUSSION:

Appellant on July 2, 2009 filed a MOTION AND MEMORANDUM TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009. These pleadings emphasize a chronology where the Appellant is being denied due process and fair treatment. For instance, the Court Order [Doc #1059] denying Appellant's Motion [Doc #1050] precedes the Notice of the May 13, 2009 Hearing [Doc #1060] scheduled to hear this Motion. In other words, the Appellant's Motion was denied prior to being given a written notice of the Hearing to decide the motion.

The Bankruptcy Court dismissed the NOTICE OF APPEAL, filed by Appellant on June 5, 2009, concerning *both* the bench order denying that Appellant was a party in interest (See pages E-777 and E-780) and the Order [Doc #1059] issued on May 13, 2009. The basis of the dismissal was that Appellant had not filed a timely Notice of Appeal.

Whether the District Court rules that Appellant was denied due process at different stages leading up to and subsequent to the May 13, 2009 Hearing, or that the Notice of Appeal was somehow ruled as timely because of excusable neglect or for some other reason, or that Appellant was denied due process with the dismissal of the Notice of Appeal, the Notice of Appeal itself contains an appeal of the issue as to whether Appellant is a party in interest.

Whether the Appellant is a party in interest is certainly a threshold issue in this case and was the basis for not allowing Appellant to object to the Final Report of Trustee Monzack. Mr. Monzack argues that: A. Mr. Chorney's Motion For Leave to File Interlocutory Appeal is improperly filed with this Court. and B. This Court lacks jurisdiction to consider Mr. Chorney's motion.

ARGUMENT:

DOES ANYONE HAVE JURISDICTION?

If it were up to the Appellees, neither the District Court nor the First Circuit Court of Appeals would have jurisdiction to hear Appellant's Interlocutory appeal.

On June 29, 2009 in CA No. 09-1117 with the First Circuit Court of Appeals, in RESPONSE TO HAROLD F. CHORNEY'S MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009, Mr. Monzack states,

"This Court (First Circuit Court of Appeals) lacks jurisdiction to consider Mr. Chorney's Motion. Mr. Chorney did not file pleading with the U.S. District Court for the District of Rhode Island with regard to the subject Order. As this Court has jurisdiction to review decisions of the District Court and as the subject matter has not been considered by the District Court, this Court lacks jurisdiction to consider the matter."

Does the District Court for the District of Rhode Island have jurisdiction? In the RESPONSE TO HAROLD F. CHORNEY'S MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009, filed by Mr. Monzack on July 10, 2009, Mr. Monzack states,

"This Court (District Court) lacks jurisdiction to consider Mr. Chorney's motion. This Court's jurisdiction to hear an appeal from the Bankruptcy Court is derived from 28 U.S.C. §158. To invoke the jurisdiction of this Court, a timely appeal must be filed pursuant to Rule 8002 of the Federal Rules of Bankruptcy Procedure. As timely appeal was not filed, this Court lacks jurisdiction to consider Mr. Chorney's motion."

Using the rational of Mr. Monzack, because no Notice of Appeal was filed within ten days of the Final Order, then none of the due process or other manipulations and violations can be appealed. If this were true, then the rules as they exist are manifestly unjust concerning the circumstance involved with the May 13, 2009 Hearing.

Respectfully Submitted,

s/Harold F. Chorney, Pro Se
16 Spring Drive
Johnston, R.I. 02903
(401) 934-0536

CERTIFICATION

I hereby certify that on this _____day July 2009, I sent a copy of the above by first class mail to the following:

Arthur N. Votolato, Judge
380 Westminster Mall, 6th Floor
Providence, R.I. 02903

Edward J. Bertozzi, Jr.
Edwards Angell Palmer & Dodge LLP
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Providence, R.I. 02903

Jason D. Monzack
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Cranston, R.I. 02910

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17 Accord Park Drive, Ste 103
Norwell, MA 02061

United States Trustee
Thomas P. O'Neill, Jr. Federal Office Bldg.
10 Causeway Street Room 472
Boston, MA 02222-1043

s/HAROLD F. CHORNEY

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

IN RE: CUMBERLAND INVESTMENT CORPORATION

Debtor

HAROLD F. CHORNEY

Appellant

v. C.A. No.: 08-189ML

JASON D. MONZACK and

JOHN F. CULLEN,

Appellees

RESPONSE TO HAROLD F. CHORNEY'S MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009

INTRODUCTION

The Bankruptcy Court Order of May 13, 2009 (copy attached hereto as Exhibit 1) that is the subject of Mr. Chorney's Motion was not timely appealed by Mr. Chorney. (See Judgment Order and Order Dismissing Appeal attached hereto as Exhibits 2 & 3 respectively)

ARGUMENT

A. Mr. Chorney's Motion For Leave to File Interlocutory Appeal is improperly filed with this Court.

Rule 8002(a) of the Federal Rules of Bankruptcy Procedure requires that a notice of appeal be filed "within ten (10) days of the entry of the judgment, order or decree appealed from." The advisory committee notes state that "If a timely notice of appeal is not filed, no appeal may be taken later." Also see Wynn v. Reiber, 98 Fed. Appx. 32, 2004 WL 693413 (C.A. 2(N.Y.). As Mr. Chorney filed his notice of appeal after the ten (10) day appeal period, he may not file his appeal by another means. Additionally, if Mr. Chorney has filed his motion in Case No. 08-189 ML, which dealt with Chorney's appeal of another Bankruptcy Court Order. The appeal in Case No. 08-189ML was fully adjudicated by means as this Court's Orders of December 18, 2008 and January 2, 2009. Chorney's subject motion is not properly filed in Case No. 08-189ML. (Note that Mr. Chorney has filed an essentially identical "Motion for Leave to File Interlocutory Appeal of the Bench Order dated May 13, 2009" in the First Circuit Court of Appeals.)

This Court lacks jurisdiction to consider Mr. Chorney's motion.

This Court's jurisdiction to hear an appeal from the Bankruptcy Court is derived from 28 U.S.C. §158. To invoke the jurisdiction of this Court, a timely appeal must be filed pursuant to Rule 8002 of the Federal Rules of Bankruptcy Procedure. As a timely appeal was not filed, this Court lacks jurisdiction to consider Mr. Chorney's motion.

CONCLUSION

For the foregoing reasons, this Court should deny and dismiss Mr. Chorney's motion and grant such further relief as it deems just and appropriate.

Respectfully submitted,

s/Jason D. Monzack, Esq., #1445
KIRSHENBAUM & KIRSHENBAUM
Attorney's at Law, Inc.
888 Reservoir Avenue
Cranston, RI 02910
(401) 946 3200 Phone
(401) 943-8097 Fax

CERTIFICATION

The undersigned certifies that on July 10, 2009, a copy of the foregoing Response to Harold F. Chorney's Motion for Leave to File Interlocutory Appeal of the Bench Order Dated May 13, 2009 was electronically filed with the Clerk of the District Court of the United States for the District of Rhode Island using the CM/ECF System. The following CM/ECF participants have received notice electronically:

Edward J. Bertozzi, Jr., Esq.
Edwards Angell Palmer & Dodge LLP
2800 Financial Plaza
Providence, RI 02903
ebertozzi@eapdlaw.com

and my office mailed by prepaid first class mail to the following:

U.S. Trustee's Office
Room 910
10 Dorrance Street
Providence, RI 02903

Harold Chorney
16 Spring Drive
Johnston, RI 02919

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT IF RHODE ISLAND

In Re: Cumberland Investment Corporation

Debtor(s)

BK No. 1:89-bk-11051

Chapter 7

Order Denying Document (doc# 1050) After Hearing

Re: Motion for Petition for authorization to file Motion in Obj. to final report, filed by Harold Chorney

Upon consideration of the above entitled document and any objection or response thereto, and after hearing, IT IS ORDERED that for the reasons stated by the Court in its bench decision which are incorporated herein by reference, the Document (doc# 1050) is DENIED.

Judgment #: 1:89-bk-11051-1059-1050

ORDER:

By: CAL
Deputy Clerk
Entered on Docket: 5/13/09
Document Number: 1059 -- 1050

ENTER:
s/Arthur N. Votolato
U.S. Bankruptcy Judge
Date: 5/13/09

Exhibit 1

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF RHODE ISLAND

380 Westminster Street, 6th Floor

Providence, RI 02903

ww.rib.uscourts.gov

(401) 626-3100

Cumberland Investment Corporation

Debtor(s)

BK No. 1-89-bk-11051

Chapter 7

Judge: Arthur N. Votolato

JUDGMENT ORDER

Pursuant to the order entered this date, judgment is hereby entered regarding:

Judgment Order (re:[1067] Order Dismissing Doc #1065 Notice of Appeal)

s/Susan M. Thurston
Clerk, US Bankruptcy Court

Entered on Docket: 6/9/09
Document Number: 1068 1067 By:CAL
Deputy Clerk

Exhibit 2

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

Cumberland Investment Corporation

Debtor(s)

BK No. 1:89-bk-11051

Chapter 7

ORDER DISMISSING APPEAL [Doc.# 1065]

On May 13, 2009, the Court entered an order [document #1059] denying Harold F. Chorney's Motion for authorization to file a motion and memorandum objecting to the trustee's final report and account before distribution. Thereafter, twenty-three days later, on June 5, 2009, Harold F. Chorney filed a Notice of Appeal to the United States District Court for the District of Rhode Island.

Rule 8002(a) of the Federal Rules of Bankruptcy Procedure provides that a notice of appeal must be filed "within 10 days of the date of the entry of the judgment, order, or decree appealed from."

Accordingly, as the notice of appeal filed on June 5, 2008 [document #1065] was filed out of time, it is hereby ORDERED that the appeal [doc. 1065] is DISMISSED.

ORDER:	ENTER:
	s/Arthur N. Votolato
By: CAL	U.S. Bankruptcy Judge
Deputy Clerk	Date: 6/9/2009
	EOD: 6/9/2009

Exhibit 3

UNITED STATES FEDERAL DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

IN RE: CUMBERLAND INVESTMENT CORPORATION

CA NO. 08-189ML

MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009

Now comes Harold F. Chorney, a pro se Appellant with property interests and an interested party in the above captioned matter from 1989 until May 12, 2009 and requests this court grant Appellant permission in accord with 28 U.S.C. §158 (a) (3) for leave to appeal the bench decision of May 13, 2009, stating that Appellant is not a "party in interest" in bankruptcy case no. 89-11051.

Appellant states for cause those reasons why the appeal of this bench decision should be allowed. Appellant relies on those reasons as stated in the attached MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE AN INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009.

Respectfully Submitted,

s/Harold F. Chorney, Pro Se
16 Spring Drive
Johnston, R.I. 02903
(401) 934-0536

CERTIFICATION

I hereby certify that on this ______day July 2009, I sent a copy of the above by first class mail to the following:

Arthur N. Votolato, Judge
380 Westminster Mall, 6th Floor
Providence, R.I. 02903

Edward J. Bertozzi, Jr.
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2800 Financial Plaza
Providence, R.I. 02903

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Office of the U.S. Trustee
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Law Office of John F. Cullen, PC
17 Accord Park Drive, Ste 103
Norwell, MA 02061

United States Trustee
Thomas P. O'Neill, Jr. Federal Office Bldg.
10 Causeway Street Room 472
Boston, MA 02222-1043

s/HAROLD F. CHORNEY

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

IN RE: CUMBERLAND INVESTMENT CORPORATION

CA NO. 08-0189ML

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009

Now comes Harold F. Chorney, a pro se Appellant with property interests and an interested party in the above captioned matter from November 8, 1989 until May 12, 2009 and requests this court grant Appellant permission in accord with 28 U.S.C. §158 (a) (3) for leave to appeal the interlocutory bench decision of May 13, 2009, stating that Appellant is not a "party in interest" in Bankruptcy Case no. 89-11051.

BACKGROUND:

On November 1, 2007 Appellant petitioned the First Circuit Court of Appeals concerning a lack of access to the courts in Bankruptcy Case No. 89-11051.

The Circuit Court in Ca. No. 07-8038 ruled that it lacked jurisdiction in this matter since no appeal was filed concerning the November 3, 2004, Bankruptcy Court order.

Hearings and appeals and associated pleadings concerning the billing practices of professionals in the bankruptcy case and the lack of accountability concerning the assets of the estate as well as the personal assets of Appellant were next heard resulting in an appeal of the

Bankruptcy Court decisions and the District Court decisions concerning whether appellant is an aggrieved party and has standing to bring these actions. These matters and associated matters are currently before the First Circuit Court of Appeals in Ca. No. 09-1117.

On March 27, 2009, the Brief of Appellant was filed in Ca. No. 09-1117.

On March 27, 2009, the U.S. Trustee filed the Final Report for Trustee Monzack and certified said report.

On April 14, 2009, Appellant sent a letter to the court with an Objection to the Final Report in accordance with 11 U.S.C. Rule 5009, stating that the estate was not fully administered. (See E 694-701.)

On April 14, 2009, Appellant wrote a letter to the U.S. Trustee concerning an accounting of the prior administration of the estate by the successor trustee in re: 11U.S.C. §2012(b)(2) and an accounting by the clerk of courts of the fees paid to professionals in re: 11 U.S.C. §2013(b). (See E702.)

On April 15, 2009, the Bankruptcy Court docketed [Doc #1050] Appellant's Objection to the Final Report. (Par. #6 above, dated 3/27/09.) (See E694-701.)

On April 15, 2009, [Doc #1045] scheduled a Hearing on the fee applications of Mr. Cullen [951] , fee applications of Mr. Monzack and the Final Report. (See E703.)

On April 17, 2009, [Doc #1046] notice of April 30, 2009 Hearing sent only to John F. Cullen. (See E704-4.)

On April 26, 2009, [Doc # 1048] notice of April 30, 2009 Hearing for all the parties in interest, including Appellant. (See E706-8.)

On April 28, 2009, [Doc #1049] notice of April 30, 2009 Hearing. (See E709.)

On April 28, 2009, [Doc# 1049-1] Hearing entry states, "set in error." (See E710.)

On April 29, 2009 [Doc #1051-1052] Order for written position of Trustee and U.S. Trustee. (See E711-712.)

On April 29, 2009, [Doc # 1053] notice of Continued Hearing. (See E713.)

On April 30, 2009 Appellant receives [Doc # 1048] *after* the hearing would have occurred. (See E706-8)

On April 30, 2009 the website Calendar for 30 April 2009 from Bankruptcy Court indicated all entries "VACATED." (See E714.)

On May 5, 2009 Appellant receives letter from A.U.S.T. Donahue in re: "Interim Report and Account of Receipts and Disbursements" with exhibit CHAPTER 11 TRUSTEE'S FINAL REPORT AND ACCOUNT OF RECEIPTS AND DISBURSEMENTS, dated 2/24/94. (See E715-723.)

On May 5, 2009 [1056] Mr. Donahue files Position to Appellant's Objection to the Final Report. [1050] (See E724-734.)

On May 6, 2009 [1057] Mr. Monzack files Position to Appellant's Objection to the Final Report. [1050] (See E735-767.)

On May 11, 2009 [Doc #1056-1] **DISREGARD-SET IN ERROR*** on 5/5/2009 entry. (See E768.)

On May 11, 2009 Notice of Hearing [Doc #1060] on May 13, 2009 is after [Doc #1059] the Order denying the Motion in Objection to Final Report heard at this Hearing. (See E769-771.)

On May 11, 2009 Appellant received telephone call from clerk's office that a Hearing will be held on May 13, 2009.

On May 13, 2009, this is a copy of the court calendar. (See E772.)

On May 13, 2009 the Hearing was held and an Order [1059] denying [1050] Motion in Objection to Final Report by Interested Party by Harold F. Chorney. (See E773.)

On May 13, 2009 Appellant ordered a transcript of the Hearing for a 14 day delivery and was told by the clerk's office that the transcriber would contact Appellant, which they did. (See Transcript E774-793.)

On May 14, 2009 docket, it shows that Mr. Cullen was there under APPEARANCES. (See E794.)

On May 15, 2009 Notice of Hearing, dated 5/11/09 [1060] received by Appellant and presumably by other parties in interest concerning Hearing to be held on13 May 2009 two days after the hearing actually happened. (See E769-771.)

On May 15, 2009 [1061] Certificate of Mailing of ORDER entered May 16, 2009.

Between May 17, 2009 and May 26, 2009 Appellant was in South Carolina on a trip planned many months earlier.

On June 1, 2009, Forrest Wallace Cato wrote an Affidavit at my request concerning the lack of proper notice for bankruptcy court hearings, including the Hearing on May 13, 2009. (See E795-797.)

On June 5, 2009, Appellant received by email a copy of Transcript [1064] and by UPS on June 8, 2009 of Hearing dated May 13, 2009.

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Appellant had asked the court to be excused from appearance between June 8, 2009 and June 16, 2009 to attend his granddaughter's graduation in California. Appellant returned to Rhode Island the evening of June 16, 2009.

On June 18, 2009, Appellant filed MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF BENCH

ORDER DATED MAY 13, 2009 to the First Circuit in Ca. No. 09-1117.

On June 29, 2009, Appellee Monzack filed RESPONSE TO HARLD F. CHORNEY'S MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009.

DISCUSSION

There is a long history in Bankruptcy Case Number 89-11051 concerning lack of notice, manipulation of the docket and other due process violations. Some bizarre occurrences have been recorded concerning the Hearings for April 30, 2009 and May 13, 2009 as listed above concerning the billings and accounting of the estate. There were Hearings "Set in error" and telephone calls on May 11, 2009 that there was a Hearing in two days but no written notice of the hearing was received until two days after the hearing was held. When I asked the clerk on May 11, 2009 about Mr. Cullen's billing being scheduled for the Hearing, it took a while for the clerk to respond that Mr. Cullen's billing was indeed scheduled for that Hearing. The strangest of all was Mr. Cullen being listed under APPEARANCES at the May 13, 2009 Hearing on the May 14, 2009 Docket when he was not in the court room at all. Subsequently, that section of the docket disappeared from the docket altogether. Then, there were conversations with Mr. Cato concerning Notices of Hearings Cato was receiving after the Hearings had already been held. I asked Mr. Cato to write me an Affidavit concerning this.

When Appellant left for a trip to South Carolina on May 17, 2009, he had not received any Final Order in the mail concerning the Hearing on May 13, 2009. During the trip Appellant periodically checked on the status of the Transcript and pleadings related to the Hearing on May 13, 2009. Upon returning from the trip on May 26, 2009 there was no Final Order at his home. There is always the possibility that other parties may have misplaced Docket #1059 but I do not have a copy of that order with exception of the order printed from the court docket on PACER.

Appellant was waiting for the Transcript to arrive to file his Notice of Appeal to include both the Final Order and the bench decision of the court that Appellant was not a party in interest. Appellant was in the process of preparing the Designation of the Record and the Statement of the Issues.

ARGUMENT:

Whether the court deems some impropriety was done in relation to the dismissal of the Notice of Appeal, Appellant in arguing the fact that he is a party in interest is certainly the threshold issue concerning the due process violations in this case.

APPELLANT IS A PARTY IN INTEREST

Appellant argues that he is and always was an interested party in this twenty-year old case.

When responding to questions by the Court Chorney stated that, "I'm a party in interest---" the Court then inferred that other courts have ruled that Chorney was not a party in interest by stating that, "....it's been ruled that you...that it has been decided many times, not just by me, but by District and First Circuit Court of Appeals, and I guess by implication, even the United States Supreme Court..." (See TR 5/13/09 pg 4, E-777.)

Finally the inference that Chorney was not a party in interest becomes the "law of this case."

"You've been determined to be not an interested party. And I'm stating that as the law of this case, okay." TR 5/13/09 pg 7, E-780.

Appellant believes that the May 13, 2009 bench decision of the Bankruptcy Court stating that he was not an interested party was erroneous and fabricated to first disqualify Appellant from objecting to the Final Report as a party in interest and secondly to circumvent the fact that the trustee by statute has a duty to account for the assets of the estate.

In re Peachtree Lane Assocs., Ltd., 188 B.R. 815, 824 (N.D. Ill. 1995) (comprehensive examination of the precedent on what satisfies the standard for being a party in interest); *accord* In re Johns-Manville Corp., 36 B.R. 743 (Bankr. S.D.N.Y. 1984) (party in interest "must be determined on an *ad hoc* basis"). It certainly includes creditors and shareholders but may not include a party with an indirect or remote interest. It is 'generally understood to include all persons whose pecuniary interests are directly affected by the bankruptcy proceedings.'"

There can be little doubt that Appellant satisfies the criteria listed above. He is the majority shareholder of Cumberland Investment Corporation with about a 95 percent ownership of this company. In addition, Appellant has all sorts of pecuniary interests in the estate of Cumberland Investment Corporation ranging from the Trustee claiming that Appellant owes the estate over $200,000 to having personal property seized by the Chapter 11, Trustee Mr. Cullen.

TRUSTEES HAVE FAILED TO ACCOUNT FOR THE ESTATE ASSETS AND ADDRESS THE MISSING ASSETS

The case law listed below highlights the duties of the trustee to account for the assets of the estate.

In re Refco, Inc, 336 BR. 193 (Bankr. S.D.N.Y. 2006)

"Judge Drain identified three relevant propositions that have been applied in interpreting a trustee's duties under 704(7): (1) the duty to furnish information is "fairly extensive" in light of the overriding duty to keep parties informed, with the burden generally being on the trustee to demonstrate why information should not be disclosed; (2) the duty to provide information is not unlimited, though, and a trustee can obtain a protective order if disclosure would result in waiver of attorney-client privilege or require disclosure of proprietary or confidential information; and (3) the trustee's right to a protective order is informed by the trustee's fiduciary duties, and whether the purpose of the requesting party is inconsistent with those duties (for instance, if the requesting party is seeking information in order to obtain an undue advantage over another party). Judge Drain found each of those considerations to be applicable to construing a committee's obligation to provide access to information under 1102(b)(3)(A)"

The burden on the Trustee to state why the information requested by Appellant and other parties in this case has not been produced has been supported by Judge Votolato and the U.S. Trustee's office at all stages of this case.

CONCLUSION:

Appellant is certainly a party in interest and has been prevented by unfair procedures in obtaining information to prove his case. Statutes have been circumvented by officers of the court so that Appellant is denied the information required to prove his case. In doing so, Appellant has been denied equal protection under the law.

WHEREFORE, Appellant requests this honorable court grant leave for Appellant to file an Interlocutory Appeal or any other remedy it metes as just and fair.

Respectfully Submitted,

s/Harold F. Chorney, Pro Se
16 Spring Drive
Johnston, R.I. 02903
(401) 934-0536

CERTIFICATION

I hereby certify that on this ______day July 2009, I sent a copy of the above by first class mail to the following:

Arthur N. Votolato, Judge
380 Westminster Mall, 6th Floor
Providence, R.I. 02903

Edward J. Bertozzi, Jr.
Edwards Angell Palmer & Dodge LLP
2800 Financial Plaza
Providence, R.I. 02903

Jason D. Monzack
Kirshenbaum & Kirshenbaum
888 Reservoir Avenue
Cranston, R.I. 02910

Leonard DePasquale, AUST
Office of the U.S. Trustee
10 Dorrance Street
Providence, R.I. 02903

John F. Cullen
Law Office of John F. Cullen, PC
17 Accord Park Drive, Ste 103
Norwell, MA 02061

United States Trustee
Thomas P. O'Neill, Jr. Federal Office Bldg.
10 Causeway Street, Room 472
Boston, MA 02222-1043

s/HAROLD F. CHORNEY

App. M

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF RHODE ISLAND

In re:

Cumberland Investment Corporation Debtor(s)

BK No. 89-11051
Chapter 7

ORDER DISMISSING APPEAL [Doc. #1065]

On May 13, 2009, the Court entered an order [document #1059] denying Harold F. Chorney's Motion for authorization to file a motion and memorandum objecting to the trustee's final report and account before distribution. Thereafter, twenty-three days later, on June 5, 2009, Harold F. Chorney filed a Notice of Appeal to the United States District Court for the District of Rhode Island.

Rule 8002(a) of the Federal Rules of Bankruptcy Procedure provides that a notice of appeal must be filed "within 10 days of the date of the entry of the judgment, order, or decree appealed from."

Accordingly, as the notice of appeal filed on June 5, 2008 [document #1065] was filed out of time, it is hereby ORDERED that the appeal [doc. #1065] is DISMISSED.

ORDER:

_cal
Deputy Clerk

ENTER:

s/Arthur N. Votolato
U.S. Bankruptcy Judge
Date: 6/9/2009
EOD: 6/9/2009

NOTICE OF APPEAL TO UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND FROM A JUDGMENT OR ORDER OF THE BANKRUPTCY COURT FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES DISTRICT BANKRUPTCY COURT FOR THE DISTRICT OF RHODE ISLAND

IN RE: CUMBERLAND INVESTMENT CORPORATION
NOTICE OF APPEAL CA. NO. 89-11051

Notice is hereby given that Harold F. Chorney, Petitioner with property interests in the above captioned matter, without assistance of counsel, hereby appeals to the United States District Court of the District of Rhode Island from the bench decision of May 13, 2009 stating that Chorney is not a party in interest and the final judgment [Doc #1059] dated May 13, 2009 of the Bankruptcy Court for the District of Rhode Island, denying [Doc #1050]. [Doc #1050] is dated April 14, 2009 and entitled MOTION AND MEMORANDUM IN SUPPORT OF MOTION IN OBJECTION TO THE FINAL REPORT AND ACCOUNT BEFORE DISTRIBUTION,REQUEST FOR CONPENSATION AND REPORT ON CLAIMS/PROPOSED DISTRIBUTION [DOCKET 1043].

Respectfully submitted,

s/Harold F. Chorney
16 Spring Drive
Johnston, R.I. 02919
(401) 934-0536

Dated: June 5, 2009

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF RHODE ISLAND

In Re: Cumberland BK No.: 1:89-bk-11051

Investment Corporation Chapter 7

Order Denying Document (doc. #1050) After Hearing

Re: Motion for Petition for authorization to file Motion in Obj. to final report, filed by Harold Chorney

Upon consideration of the above entitled document and any objection or response thereto, and after hearing, IT IS ORDERED that for the reasons stated by the Court in its bench decision which are incorporated herein by reference, the Document (doc. #1050) is DENIED.

Judgment #: 1:89-bk-11051-1059-1050

ORDER:	ENTER:
By: CAL	s/Arthur N. Votolato
Deputy Clerk	U.S. Bankruptcy Judge
	Date: 5/13/09

Entered on Docket: 5/13/09

Document Number: 1059-1050

I, Joseph Speetjens, declare under penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the

Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notice only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(I), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 15, 2009 s/ Joseph Speetjens

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF RHODE ISLAND

In Re: Cumberland Investment Corporation

Debtor(s)

BK No. 1:89-bk-11051

Chapter 7

Order Denying Document (doc# 1050) After Hearing

Re: Motion for Petition for authorization to file Motion in Obj. to final report, filed by Harold Chorney

Upon consideration of the above entitled document and any objection or response thereto, and after hearing, IT IS ORDERED that for the reasons stated by the Court in its bench decision which are incorporated herein by reference, the Document (doc #1050) is **DENIED**.

Judgment #: 1:89-bk-11051 - 1059 - 1050

ORDER:	ENTER:
By: **CAL**	s/Arthur N. Votolato
Deputy Clerk	U.S. Bankruptcy Judge
	Date: **5/13/09**

Entered on Docket: **5/13/09**

Document Number: **1059 - 1050**

odmaah.jsp #120

CERTIFICATE OF NOTICE

District/off: 0103-1 User: chris Page 1 of 2
Date Rcvd: May 13, 2009

Case: 89-11051 Form ID: 120 Total Served: 73

The following entities were served by first class mail on May 15, 2009.

db +Cumberland Investment Corporation, 141 Main Street, Woonsocket, RI 02895-4330

aty +Anne Desormier-Cartwright, Lewis Vaogsen Rosenbach & Fitzgerald, 500 S. Australia Ave., 10th floor, West Palm Beach, FL 33401-6223

aty +Anthony A. DeLuca, 189 Canal Street, Providence, RI 02903-1319

aty Charles V. Ryan, Ryan Martin Costello Allison et al, PO Box 15629, Springfield, MA 01115-5629

aty +David M. Campbell, Visconti & Boren, Providence Square Building, 55 Dorrance Street, Providence, RI 02903-2221

aty +Dorothy A. Carr-Gross, 31 Osage Drive, Warwick, RI 02888-6113

aty Edward J. Bertozzi, Jr., Edwards & Angell, 2800 Financial Plaza, Providence, RI 02903

aty +Evans Carter, Goldstein Burkin Wennett & Carter, 85 Devonshire Street, Boston, MA 02109-3504 aty +Frank M. Cadigan, Federal Deposit Insurance Corporation, 101 East River Drive, PO Box 280402, East Hartford, CT 06108-3285

aty +James A. Goodhue, Grindle Robinson & Kertzman, 40 Grove Street, Wellesley, MA 02482-7729

aty +John Fitzgerald, U.S. Trustee's Office, 10 Causeway Street, Boston, MA 02222-1001

aty Jonathan F. Oster, Oster & Sawyer, Suite C 203, 1525 Old Louisquisset Pike, Lincoln, RI 02865

aty +Lloyd R. Gariepy, Plaza Center, Suite 203, 68 Cumberland Street, Woonsocket, RI 02895-3331

aty +Marc D. Wallick, Wallick & Associates, 51 Jefferson Boulevard, Warwick, RI 02888-1002

aty +Mark Herendeen, Alexander & Alexander, 1 Constitution Plaza, Boston, MA 02129-2025

aty +Marlene Reich, Ancel Miroff & Frank, 1000 Two Market Square Center, PO Box 44129, Indianapolis, IN 46244-0129

aty +Marty C. Marran, 260 Lonsdale Avenue, Pawtucket, RI 02860-2718

aty +Michael A. Silverstein, Hinckley Allen & Snyder, 1500 Fleet Center, Providence, RI 02903-2319

aty +Patrick J. Quinlan, Quinn Schechtman & Teverow, 55 Pine Street, Providence, RI 02903-2841

aty +Peter J. Furness, Sinapi Formisano & Co, 100 Midway Place Suite 1, Cranston, RI 02920-5742 aty +Robert M. Duffy, Duffy & Sweeney, 300 Turks Head Building, Providence, RI 02903-2226

aty +Shawn F. S. McCormick, Goldstein Burkin Wennett & Carter, 85 Devonshire Street, Boston, MA 02109-3504

aty +Sheldon R. Scoliard, PO Box 3403, Providence, RI 02909-0403

aty +Susan Corey Waters, Dubail Judge PC, 275 North Lindbergh Boulevard, St. Louis, MO 63141-7833

aty +Warren D. Taft, PO Box 52, Mendon, MA 01756-0052

aty +William C. Morris, Morris Bell & Morris, 14/16 Church Street, Asheville, NC 28801-3304

aty +William H. McCarty, Mason Griffin & Pierson, 101 Poor Farm Road, PO Box 391, Princetown, NJ 08542-0391

aty +Zvi Hershel Smith, 510 Crown Street Unit 3F, Brooklyn, NY 11213-5158

tr John F. Cullen, Historic Charlestown Navy Yard, C-3, Shipway Place, Boston, MA 02129

intp +Allan M. Shine, Winograd Shine & Zacks, 123 Dyer Street, Providence, RI 02903-3980

auc +Christie Manson & Woods, 55 East 59 Street,, 4th Floor, New York, NY 10022-1723

intp +Christy's Public Auction, 502 Park Avenue, ATTN: James Lamb, New York, NY 10022-1108 op +David Powers, 725 Branch Avenue, Providence, RI 02904-2278

intp +Delia DeGaetano, 2594 Mermaid Avenue, Wantagh, NY 11793-4408

cr Dr. Walter H. Burkhardt, Heumadenerstr. 16, D -70329 STUTTGART, GERMANY

ptcrd +Eastland Bank, Attn: Eugene A. Gasbarro, 25 Cummings Way, Woonsocket, RI 02895-3224

intp Edwards Angell Palmer & Dodge LLP, 2800 Financial Plaza, Providence, RI 02903

cr +Ellis Davis, PO Box 1433, Griffin, GA 30224-0034

cr +Fannie Helen Melcer, 131 Farnum Ave., N. Providence, RI 02911-3345

cr Freda Kernes, 8500 Royal Palm Blvd. Apt. B523, Coral Springs, FL 33065-5763

cr +Frederick J. Coor, 4197 Province Line Road, Princeton, NJ 08540-2223

cr +Fredericke J. Coor, 4197 Province Line Road, Princeton, NJ 08540-2223

cr +George F. Schudy, DDS, 909 Dairy Ashford, Suite 201, Houston, TX 77079-5306

cr +Gerald J. Aubin, 95 Hill Road, Burrillville, RI 02830-1003 intp +Harold Chorney, 16 Spring Drive, Johnston, RI 02919-3028

cr Harry Kernes, 333 W State Street - #11F, Trenton, NJ 08618-5745

cr +Intergroup II/Atlanta, Inc., 915 River Rock Drive, Suite 101, Woodstock, GA 30188-4590

intp +Irving Brodsky, PO Box 40728, Providence, RI 02940-0728

op +John Doe, One Terrace Ave., Providence, RI 02909

cr +Joseph J. Tozza, 6 Hastings Road, Winchester, MA 01890-3859

cr Marguerite Topalian, 600 Trapelo Road, Apt. 11, Waltham, MA 02452-7996

cr +Marilea Hanson Smith, PO Box 1536, Bradenton, FL 34206-1536

cr Marilyn McGuigan, 15995 Horseshoe Hill Road, Caledon, Ontario Canada L0N IC0

cr +Martin Harris, PO Box 72, New Baden, TX 77870-0072

ex +Michael Weingarten, Cambridge Meridian Group, Inc., 50 Church Street, Cambridge, MA 02138-3726

cr +NACU Enterprises, Inc., 323 Main Street, Woonsocket, RI 02895-3125 cr Nimrod Ventures Ltd., PO Box 30083, SMB, Grand Cayman, Cayman Islands

cr +Paul Wolon, 635 Dorchester Avenue, South Boston, MA 02127-3509

acc +Peter S. Lockey, 565 N. Main Street, Woonsocket, RI 02895-1190

cr +Phillip B. Layman, 252 Paseo Del Lago Circle, Henderson, NV 89074-5949

cr +Robert A. Ballou, 10 Obeline Drive, North Smithfield, RI 02896-6928

cr +Robert E. Baney, 66 Alexander Glennie Court, Pawleys Island, SC 29585-6880

cr +Ronald Hanson Smith, PO Box 1536, Bradenton, FL 34206-1536

cr Rosa M. Marashian, 56 Highland Street, Milford, MA 01757-2334

cr Russell Leon, 3465 Brownsville Road, Trevose, PA 19053-6215

crcmch Terrence B. McKenna, c/o J. B. Complex, 11026 Courtland Street, Trinity, FL 34655-7030

cr +Walker Capital Management Corp., IFG Network Securities Inc., 655 Engineering Drive, Ste 155, Norcross, GA 30092-2894

cr Warren D. Taft, Taft Appraisal Service, 148 Uxbridge Road, Mendon, MA 01756-1221 intp +Wescap Enterprises Limited, c/o Hal Chorney, 141 Main Street, Woonsocket, RI 02895-4330

cr +William T. Marston, 58 Dean Road, Milton, MA 02186-4636

intp +Z. Hershel Smith, 510 Crown Street, Unit 3F, Brooklyn, NY 11213-5158

The following entities were served by electronic transmission on May 13, 2009.

aty +Fax: 401-471-6283 May 13 2009 18:19:15 Louis A. Geremia, Geremia & DeMarco, The Gardens Office Park I, 1350 Division Road, Suite 102, West Warwick, RI 02893-7553

cr E-mail/Text: MJMILLER@GCI.NET Michael P. Miller, 1800 Westview Circle, Anchorage, AK 99504-2936

TOTAL: 2

***** BYPASSED RECIPIENTS (undeliverable, * duplicate) *****

cr Ellis Davis

aty* Jonathan F. Oster, Oster & Sawyer, Suite C 203, 1525 Old Louisquisset Pike, Lincoln, RI 02865

aty* +Lloyd R. Gariepy, Plaza Center, Suite 203, 68 Cumberland Street, Woonsocket, RI 02895-3331

cr* +Eastland Bank, Attn: Eugene A. Gasbarro, 25 Cummings Way, Woonsocket, RI 02895-3224 cr* Harry Kernes, 333 W State Street - #11F, Trenton, NJ 08618-5745

intp* +Wescap Enterprises Limited, c/o Hal Chorney, 141 Main Street, Woonsocket, RI 02895-4330

TOTALS: 1, * 5

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.

USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 15, 2009 Signature: s/ Joseph Speetjens

UNITED STATES BANKRUPTCY COURT

DISTRICT OF RHODE ISLAND

IN RE:	Case No. 89-11051 ANV
CUMBERLAND INVESTMENT	380 Westminster Mall
CORPORATION,	Providence, RI 02903
Debtor.	May 13, 2009

12:45 p.m.

TRANSCRIPT OF HEARING

BEFORE HONORABLE ARTHUR N. VOTOLATO

UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the U.S. Trustee: Office of the United States Trustee

By: GARY L. DONAHUE, ESQ.
10 Causeway Street
Boston, MA 02222

For Chapter 7 Trustee: Kirschenbaum & Kirschenbaum

By: JASON D. MONZACK, ESQ.
888 Reservoir Avenue
Cranston, RI 02910

For Interested Party: By: HAROLD CHORNEY, Pro Se

16 Spring Drive

Johnston, RI 02919

Audio Operator: Samuel Noqueras

Proceedings recorded by electronic sound recording, transcript produced by transcription service

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Hamilton, New Jersey 08619

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(609) 586-2311 Fax No. (609) 587-3599

THE COURT: ... three applications for compensation; one addendum, United States Trustee's certificate of review that we need to consider, first, Mr. Chorney's motion for authorization to file an objection to the applications and there are oppositions to that motion by the Trustee and by the United States Trustee. We'll hear that first.

MR. MONZACK: Your Honor, please, Jason Monzack the Chapter 7 Trustee of Cumberland Investment Corporation.

THE COURT: Well, do we want to -- yes, okay, go ahead, proceed.

MR. MONZACK: Did you want us to go in a different order, Your Honor, or?

THE COURT: Well, it's Mr. Chorney's motion. I guess to not veer off the normal course we should probably hear from you first, Mr. Chorney. Unless you prefer to hear the objections first.

MR. CHORNEY: No, Your Honor, I'll go up first. Because of the change in schedule I just want to dig out a piece of paper here before I go up if I could.

Good morning, Harold Chorney, a pro se petitioner and an interested party. And I believe the aggrieved party aspect of it is currently under appeal with the First Circuit Court of Appeals.

Your Honor, I filed an objection to the final report based upon Rule 5009 stating that the estate has not been fully administered. Since I filed that motion which has been placed on the court docket I had written to Mr. Donahue concerning the report that the successor trustee, Mr. Monzack, according to Statute 2012(b)(2) was to write concerning the administration of the estate by the prior trustee. Mr. Donahue sent me a letter dated May 5th which calls the report that he sends to me the interim report of Trustee John F. Cullen. And the report itself that he forwards to me says the final report of John F. Cullen. Basically I feel that the estate is not fully administered, there's a lot of questions concerning the information contained in Form 1 and Form 2 submitted by Mr. Monzack, and certified by the trustee. I don't really know, Your Honor, what it means when the trustee says I've certified this report over here. I presume that it means that he's saying that it's true and accurate, but I don't believe that it is.

MR. DONAHUE: Excuse me, Your Honor. May I interrupt and interpose an objection? Objection, Your Honor. Gary Donahue for the United States Trustee. Mr. Chorney is attempting to argue the merits of the underlying objection and/or communications directly with me which have no bearing on the instant motion. The motion before the Court that you indicated you'd be considering was whether or not leave would be granted to allow him to file a pleading. Relief from your November, 2004 order, Your Honor, I would respectfully request

that Mr. Chorney be restricted to arguing that pleading first since you indicated that's what we would hear first, instead of a dissembling argument about things which are not on for hearing including correspondence between him and myself. So that is my speaking objection.

THE COURT: What your burden is, number -- well, first and foremost and maybe only right that you have here this morning is to satisfy the Court that you should be allowed in light of everything that's transpired before this morning to, you know, stand at that podium and speak. Like, what has changed over the last -- how many years is it now since --

MR. CHORNEY: It's in it's 20th year, Your Honor.

THE COURT: Okay. What is new this morning?

MR. CHORNEY: Nothing's really new, Your Honor. I'm a party in interest --

THE COURT: Well, it's been ruled that you --

MR. CHORNEY: -- and according to statute --

THE COURT: -- who you say you are, that it's been decided many times, not just by me, but by District and First Circuit Court of Appeals, and I guess by implication, even the United States Supreme Court, I guess they denied certiorari, didn't they?

MR. CHORNEY: Yes. With all due respect, Your Honor, being a party of interest was never the subject of any of those decisions. What was the subject of those decisions is whether or not I was an aggrieved party and could file various things. So if Your Honor wants to come down with a ruling that I'm not a party in interest in this case then that's certainly your decision at which time I'll make a statement to the Court.

THE COURT: Well, I don't think that that's the first-- that this is the first time that's ever been raised. In fact, I know that's incorrect and inaccurate. But you're entitled to say, I guess, whatever word you want to come out of your mouth.

MR. CHORNEY: Well, I'd say it under oath, Your Honor. I have no recollection --

THE COURT: No, I'm not going to take testimony this morning. I'm asking you what is new, what can you tell me this morning that you haven't argued previously about --

MR. CHORNEY: First of all, Your Honor, --

THE COURT: That you have not argued previously.

MR. CHORNEY: Yes. Okay. Yes. Mr. Monzack filed the final report in this case. I believe it was March 27th something like that. Am I correct, Mr. Monzack?

MR. MONZACK: I don't know --

THE COURT: If you know the date.

MR. MONZACK: -- if Your Honor wants me to enter into an exchange with Mr. Chorney.

THE COURT: You're not under, you know, you're not --

MR. MONZACK: This is Mr. Chorney's opportunity to present whatever he would like to the Court and I certainly won't interrupt.

THE COURT: Do you know the date?

MR. MONZACK: If Your Honor, please, the procedure is I would have submit my report to the U.S. Trustee, they would review it, and then they would subsequently submit it to the Court. The March date is probably when it was submitted by the U.S. Trustee's Office after their review.

MR. DONAHUE: Gary Donahue for the U.S. Trustee, Your Honor. On March 27th the United States Trustee filed a certification along with a final report on behalf of the Trustee Monzack.

THE COURT: Thank you. Go ahead, Mr. Chorney.

MR. CHORNEY: Okay. So you want to know what was new on the case. It was as of that date that the final report was filed.

MR. DONAHUE: Objection, Your Honor. He's continuing to argue something that is not before you. As I indicated your instruction we were supposed to discuss the motion for leave for relief from the November 4th, 2004 order. So I object to him continuing to dissemble into the merits of his purported objection.

THE COURT: That's correct, Mr. Chorney. When I asked you what's new in the case I don't mean what documents have been filed by other people. What entitles you relief from the injunction of your intervention, you know, which you've been pretty successful at continuing, you know, over the last 20 years that we've known each other? And the question doesn't change. You need to establish your right to advocate for yourself or whoever you're advocating in behalf of, and that's really the only question that I'm going to listen to you on. Okay?

MR. CHORNEY: Your Honor, if you determine that I'm not an interested party, and virtually any interested party is entitled to question the final billing. If that's --

THE COURT: Well, what is the nature of your interest. You've been determined to be not an interested party. And I'm stating that as the law of this case, okay.

MR. CHORNEY: Okay. Well, I'm certainly being serviced by the Court with 60 other people as if I am an interested party, first of all. But if you've made the determination that I'm not an interested party, and you've shut me out and I'll just read a statement and this hearing will be over.

THE COURT: Read your statement.

MR. CHORNEY: "Your Honor, my rights are being interfered with and thus impaired. That in itself under the statutes and case laws give me standing as an aggrieved party. In addition, by shutting me off by saying that I am not a party in interest and cannot question the billings and final report the Court is allowing those questions to go unanswered and denying me equal protection under the law since virtually any party in interest is allowed to object to and question the billings. Even if I do not have standing, and I do believe that I do, these questions have been raised and the Court should take notice of the issues raised and be under a judicial duty to make further inquiry into the matter to ensure that the fees and billings are proper and correct. I would like to point out to the Court that there appears to be unexplained circumstances concerning Mr. Cullen's billings as follows.

1) Mr. Cullen has failed to appear at this hearing and has failed to appear at prior hearings.

2) Cullen has not filed any brief in the Court of Appeals matter.

3) The scheduling of the Cullen matters has been done in such a manner that I was almost unaware that a hearing was to be held on them. In fact, until I received a telephone call from the clerk's office on May 11th I did not know the status of this hearing.

4) The totality of the circumstances surrounding Cullen's non-filing of a brief in this matter, and the manner in which the hearing on his bills have been arranged on the

calendar have made Cullen's fees and billings circumspect and his absence make them even more circumspect.

Even without given the change to delve further into Cullen's fees and billings based on the Court's holding, I am not an aggrieved party or even an interested party should on its own make such inquiry and I want to go on the record in bringing this to the attention of the Court and to all the parties of interest. Thank you, Your Honor."

THE COURT: Thank you.

(Audio off)

MR. DONAHUE: Good afternoon once again, Your Honor.

Gary Donahue for the United States Trustee. On for hearing this morning is the motion of Mr. Chorney for leave for relief from the order of this Court dated November 3rd, 2004. Your Honor, the Court should deny the motion for three reasons.

First, the moving party has failed to establish cause for relief which is in effect an injunctive order prohibiting the filing of motions. The order is well founded, it is based upon a well documented record of misconduct by Mr. Chorney, which I will not reiterate. I incorporate the original order as an exhibit to the objection, Your Honor. And therefore he has failed to state cause why he should have relief from it.

Second, he lacks standing, Your Honor, in that his economic interest cannot be affected by any decisions that will be rendered on the final report today whether or not you allow in its entirety or disallow in its entirety any of the pending fee applications there will be no money distributed to Mr. Chorney. His economic interest will not be effected. The estate is administratively insolvent but for a prior order of a carve out from secured sale, the unsecured creditors -- there will be no money to the unsecured creditors. It's administratively insolvent at the Chapter 11 level.

Third, res judicata. The issues raised by Mr. Chorney on the merits have been dealt with before. But those three reasons, Your Honor, the U.S. Trustee objects to the motion for relief from the order. And I would like simply to point out, Your Honor, the estate is administratively insolvent and the only situation under which it could become administratively solvent is if Mr. Chorney were to comply with the sanction order which was entered against him. In which case there would be more money. Of course at this point, Your Honor, it's futile. This case is approximately 20 years old, and by continuing to delay this case we're delaying the small dividend which the unsecured (indiscernible - audio skips).

With that objection the U.S. Trustee rests on her objection, Your Honor.

MR. MONZACK: If, Your Honor, please, Jason Monzack Chapter 7 Trustee. Pursuant to this Court's April 29, 2009 order I filed my position with regard to Mr. Chorney's motion for authorization to file a motion and an objection to the final report. My position is fairly short, Your Honor. I incorporate the U.S. Trustee's position, but would just like to point out that really the identical issue was raised before this Court when we were here eight months ago or so with regard to Mr. Bertozzi's fee application. That order was appealed to the U.S. District Court. Judge Lisi, in her order of December 18, '08, reiterated, affirmed this Court's finding that Chorney lacked standing to participate regarding claims of professional expenses against the estate. So that decision is on appeal to the First Circuit. That's the law of the case per the December 18, '08 order, and as you pointed out, Your Honor, numerous other orders. So Mr. Chorney doesn't have standing regarding professional fees and expense applications. The U.S. District Court also affirmed this Court's prior orders, several orders that go back years that say that those prior orders and judgments of this Court and prior affirmations of those orders in Appellate Courts bar Mr. Chorney's requests for accountings and discovery and a whole range of issues that Mr. Chorney has raised in the past. I would just briefly refer to Mr. Chorney's own comment in response to your inquiry just a few minutes ago that nothing is new. That's what Mr. Chorney had said. Based upon that, I would say that this Court should not grant authorization to Mr. Chorney to file his motion in objection. Thank you, Your Honor.

THE COURT: Okay. I know it's not surprisingly the Court agrees with and adopts and incorporates the arguments of the objectors to Mr. Chorney's present motion to gain standing and to participate in this morning's -- this afternoon's hearing on applications for compensation by professionals. It would be really a silly endeavor to start to review things because this case has gotten way out of hand on anybody that I know, anybody's ability to review with any meaningful significance the travel of the case or why we're here this morning, Mr.

Donahue, Mr. Monzack, Mr. Chorney and the Court. A few new faces are the office staff, but that will continue, I guess, until this case is really ended. So Mr. Chorney's motion is denied. Your objection to the ruling, Mr. Chorney, is noted, and we will proceed with the hearing on the fee applications without your participation. And as I say your objection to that ruling is on the record. Mr. Monzack or whoever.

MR. DONAHUE: Your Honor, I'm just going to make a statement for the record. Gary Donahue for the United States Trustee. Again, Your Honor, on March 27th I filed the trustee's final reply along with certification. We reviewed the final report on behalf of the United States Trustee and state for the record we have no objection to the final report. I've also reviewed the fee applications that were submitted prior, and the United States Trustee has no objection to those fee applications. Obviously the Court has an independent duty and responsibility to review them, but we have no objection to them, Your Honor. I would simply point out as the case continues along the Chapter 7 administrative expense is prime, Chapter 11 administrative expenses and those Chapter 11 administrative expenses continue to therefore be wasted away or the distribution is wasting away as Mr. Monzack's fees necessarily need to increase as he continues to defend the estate against appeals which have little merit, Your Honor. So the sooner we continue this progress towards the ultimate resolution. But having said all that, Your Honor, I have no objection to the pending fee applications or the final report.

THE COURT: Thank you.

MR. MONZACK: Your Honor, please, before the Court is my fourth addendum to first and final application for attorney's fees. Pursuant to that fourth addendum which modifies the second and third addendums that were previously submitted to this Court I am asking for attorney's fees -- additional attorney's fees over and above those that were previously awarded of $40,635 plus $30.55 of expenses. The fee application and expenses are detailed in the submission that has been submitted to the U.S. Trustee's Office and to this Court.

In addition, there's also an application for trustee's commission. There's been no prior trustee's commission paid in this case to me. That application is for $18,758.53. I would just point out to the Court, as Mr. Donahue alluded to, that the present fee application before this Court covers time through November 20th, 2008. Since that time there's been briefing to the U.S. District Court. Now there's briefs that I've submitted to the Circuit Court in Boston. There's an additional about $8000 in time that I have spent on this case since November 20th of '08.

The appeal that's pending in the First Circuit is the appeal of Judge Lisi's of December 18, '08. Unless the Court has any questions for me with regard to fee application I would rely on the fee application and supporting documents that have been submitted to the Court on this matter.

THE COURT: Just for the record, while we're here, can you in a summary fashion or -- yes, summarize the picture of the estate right now?

MR. MONZACK: The estate right now has funds that are designated for unsecured creditors of $61,162.49. That sum will not change no matter what happens with regard to additional administrative expenses in that those funds were carved out from prior secured party sales pursuant to prior orders of this Court. And upon approval of the accounting that's been submitted to the Court I would make a distribution to the unsecured claimants of those funds because there's no risk of those funds being diminished. And finally they will get that distribution from this case.

There also is a sum of $181,064.57 that are designated for administrative claims. The percentage that would be allocated to Chapter 11 administrative expenses at this present time would be approximately 30 percent of the Chapter 11 administrative claim, though that percentage is constantly going down because I have submitted additional fee applications on behalf of the Chapter 7 administrative expenses and as those get paid the percentage that goes to Chapter 11 administrative expenses is continually reduced.

Other than that the assets of this estate in terms of - I don't want to go back into ancient history, there were claims that were class action lawsuits the kinds that were returned to the class action claimant's counsel, numerous coins and stamps were liquidated during the course of the estate. There is the one open asset so-to-speak that the sanction against Mr. Chorney that was $200,000 many years ago. With interest that's accrued that amount is probably in excess of $500,000 today. We had held several supplemental proceedings before this Court in an effort to collect those funds from Mr. Chorney and this Court ultimately entered an order suspending those hearings, but ordering Mr. Chorney to continue to file annual tax returns, I believe, with the U.S. Trustee's Office. And I don't know if he's complied with those orders or not. I don't know how much of the 18 year history of the case that we've reviewed on numerous occasions before -- before the Court that the Court would like me to go into at this time.

THE COURT: Well, certainly not looking for minute details. And the Court will make a -- has done some preliminary examination of the applications and the details in them; dates, hourly rates, et cetera, but that certainly is not the end of the job. So there'll be no rulings this morning. But can you just without, as I say, getting into detail, can you recall without having to go back into your -- bottom of your file to what your -- from the time you were appointed. You replaced, was it Weingarten or -

MR. MONZACK: No, I replaced Mr. Cullen. Mr. Cullen was the Chapter 11 Trustee.

THE COURT: Okay.

MR. MONZACK: From 1989 to 1993, I think, something like that. And then in 1993 the case converted to a Chapter 7 at which time I was appointed the Chapter 7 Trustee of the case.

THE COURT: Okay. And I take it there's been an escalation and everybody's application has been -- or at least the hourly rates from the time of the appointment of each professional up until right now.

MR. MONZACK: Certainly my fee applications that have spanned 15 years or more of time, the hourly rate is $350 today is what I'm billing as an hourly rate today. I was billing significantly less, probably a third of that in -- from my time that I originally spent on the matter. All of my fee application -- well, the trustee's fee application is not dependent upon time at all, it's just a percentage of the assets that have gone through the estate. I would estimate that my hourly rate as a trustee in this case is probably 20 to $30 an hour if you added up my trustee time based upon the compensation that I'm receiving. Attorney time, I believe the blended rate was submitted to the Court as part of my fee application. And the blended rate of my attorney time is $281.58. Most of the Chapter 11 administrative expenses, those fee applications were based upon time spent many years ago. So I don't believe those fee applications have increased significantly after conversion of the case from an 11 to a 7.

THE COURT: Okay. From your personal knowledge of these proceedings certainly since you have been an official in the case, but from what you know prior to your appointment, what has been the bulk of the -- or the nature of the time expended on administration expenses? Can you classify it at all or break it down into different --

MR. MONZACK: I haven't itemized that.

THE COURT: -- categories?

MR. MONZACK: By general category there were a number of sales of coins and stamps. They were sold through Christie's, there were sales in New York, and there were sales in California. I attended all of the sales of the coins and the stamps. There was class action lawsuit that was pending in the case when I became involved on behalf of coin holders who had claimed that they had a guarantee that was issued by Cumberland Investment Corp that said at anytime if the coin canisters remained unopened -- that remained sealed that Cumberland Investment Corp would give them a guaranteed return on their coins. A number of those folks had returned their coins to Cumberland Investment Corp to collect on that guarantee. They did not receive any money pursuant to that guarantee, this particular group of coin holders, nor could they, it turned out during the course of litigation, many of them identified which specific coins were theirs. So those coins that had been identified as redemption coin holder coins pursuant to that class action litigation were turned over to the class action attorney and --

THE COURT: Okay. So handling that aspect of it was say what percentage of the total administration expenses we're looking at today here?

MR. MONZACK: Probably the majority of administrative expenses associated with this case is based upon litigation that has been begun by Mr. Chorney. I think I've had cases go up to the U.S. Supreme Court a couple of times to where cert was denied. I've been in the First Circuit Court of Appeals on many number of times including as we speak today. The appeals up to the U.S. District Court. I would say that probably the majority more time has been spent, certainly more expense because the time is more in the recent past when my hourly rates were higher. So certainly by dollar amounts I would say that the biggest portion if you identified my expenses by portion of the estate has been dealt with litigation initiated by Mr. Chorney. Again, I'm sorry I haven't broken it down --

THE COURT: That's all right.

MR. MONZACK: -- specifically by category, but that's my impression that clearly the majority of the expenses that I'm billing to the estate are related in one way or another to litigation initiated by Mr. Chorney.

THE COURT: Okay. Does the U.S. Trustee have anything you want to add? This is not a request, it's just a question.

MR. DONAHUE: I have no objection to the pending fee request, Your Honor. I would simply point out that the other fee applicants' (indiscernible - audio skip) was for many, many years ago, and if allowed in full, I believe Mr. Monzack said approximately 30 percent, if allowed in full, based on the then rates from two decades ago. So I'm sure you're going to quantify those fees. You'll either allow them in full, in part, or deny them, but whatever they're allowed they'll only receive a pro rata share of that. And we won't know that amount definitively until we're done, Your Honor.

THE COURT: Okay. All right. The applications are taken under advisement with the comments made by the United States Trustee and the present trustee who've taken into consideration as carefully as I can, and with that, if any other questions come up, if the Court has any inquiry about the details of any of the fee applications we will certainly make those questions known and hopefully get an answer for everybody as soon as possible. Thank you.

MR. MONZACK: Thank you, Your Honor.

MR. DONAHUE: Thank you, Your Honor.

CERTIFICATION

I, KIMBERLY UPSHUR, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

s/Kimberly Upshur DATE: June 5, 2009

KIMBERLY UPSHUR

J&J COURT TRANSCRIBERS, INC

Supreme Court, U.S.
FILED

105 ② No. 10-46 JUL 1 2010

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

HAROLD F. CHORNEY, *Petitioner*

v.

JASON D. MONZACK, CHAPTER 7 TRUSTEE

JOHN F. CULLEN, CHAPTER 11TRUSTEE

UNITED STATES TRUSTEE, *Respondents*

On Petition For A Writ Of Certiorari

To The United States Court Of Appeals

For The First Circuit

APPENDIX II TO WRIT OF CERTIORARI

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App. P

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

CA NO. 09-1117

IN RE: CUMBERLAND INVESTMENT CORPORATION

ON APPEAL FROM A JUDGMENT OF

THE FEDERAL DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

CA NO. 08-0189 ML

REPLY BRIEF OF APPELLANT

HAROLD F. CHORNEY, PRO SE
16 SPRING DRIVE
JOHNSTON, R.I. 02919
401 934-0536

DATED: MAY 12, 2009

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5 MAY 2009 LETTER FROM AUST DONAHUE

TO APPELLANT WITH CHAPTER 11 FINAL REPORT AND ACCOUNT OF RECEDIPTS AND DISBURSEMENTS

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REPLY BRIEF OF THE APPELLANT

SUMMARY OF APPELLANT'S ARGUMENT

Before there can be a proper distribution of estate assets, there should be a full and accurate accounting of estate assets.

It is time that a full and accurate accounting of the estate of Cumberland Investment Corporation be provided by the case Trustee, Jason Monzack.

It is time that there is a full and accurate accounting of the assets seized by Mr. Cullen on August 17, 1990 and August 23, 1990, as well as those sold, those abandoned and those missing.

It is time that there is a full and accurate accounting of the funding advanced to Appellee Cullen to administer the estate in accordance with the 364(c)(1) Agreement and Order signed on December 12, 1990. (See Rule 2012(b)(2) which requires the successor trustee to prepare, file and transmit to the United States trustee an accounting of the prior administration of the estate.) [1]

---

[1] On April 14, 2009 Appellant requested a copy of the accounting of the prior administration of the estate. In response Gary L. Donahue, Assistant U.S. Trustee sent Appellant the attached "Interim Report and Account of Receipts and Disbursements" in which Edward J. Bertozzi on July 21, 1992 received $78,180.35 for Eastland Bank POST-PETITION LOAN PAYMENT, and Mr. Bertozzi on Sept. 24, 1992 received $50,000.00 for Eastland Bank POST-PETITION LOAN PAYMENT. (See Exhibit G.) Note: Trustee's report states FINAL not INTERIM.

It is time that there is a full and accurate accounting of the fees paid to Trustees, Examiners and Professionals (See Rule 2013(b) which requires the clerk to prepare a summary of the public record of fees awarded to Trustees, Examiners and Professionals. A copy of the summary is submitted to the United States Trustee) and other disbursements with estate assets.

Appellant has a right to said accounting as a "party in interest". In addition Appellant is a "person aggrieved." Since Appellant's rights have been impaired Appellant has a pecuniary interest and has standing to plead a fraud on the court. There are no constitutional or prudential barriers to Appellant's standing in this case as has been argued in Appellant Brief. (See Appellant Brief in Ca. No. 09-1117, dated March 27, 2009 on pages 26-29.)

APPELLANT PLEADS A FRAUD ON THE COURT

The Trustees and other officers of the court in this twenty year old case, with fiduciary responsibilities to the court and to the assets of the estate, continue to not perform their duties in accordance with statute to give an accounting of the assets and disbursements involved with the funds of the estate.

The safety nets in place to supervise the fiduciary responsibilities of the trustee, namely the bankruptcy court judge and the U.S. Trustee's Office, both find no problem in the fact that assets of the estate are conspicuously missing or unaccounted for or that there are dubious billings being presented by "professionals" in this case without any meaningful breakdown as to the usage of the funds transferred to various parties like Mr. Bertozzi. In addition there is no meaningful list of assets transferred from Appellee Cullen to Appellee Monzack. (See E125-E127.)

The Executive Office of United States Trustees, a division of the Justice Department, has inexplicably not found any problems with the administration of the Cumberland Investment Corporation estate. (See E-147, E-383.)

Appellant must conclude, based upon the foregoing, that the judicial machinery cannot perform in its usual manner to adjudicate cases in an impartial manner (See Simon v. Navon, 116 F.3d 1, 6 1st Cir. 1997.)

“We recently had occasion to review the scope of "fraud upon the court" in connection with the parallel provision of the rule allowing a court to entertain an independent action to relieve a party from a judgment for fraud upon the court. Geo. P. Reintjes Co. v. Riley Stoker Corp., 71 F.3d 44, 46-49 (1st Cir.1995). In that opinion, we noted the effect of Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), overruled on other grounds, Standard Oil Co. of Cal. v. United States, 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976), in expanding the range of fraud not subject to the one-year limitation to "include fraud committed by 'officers of the court.' " Id. at 47-48. We also characterized our concept of fraud upon the court in Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir.1989), as consisting of an " 'unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter' involving an officer of the court." Reintjes, 71 F.3d at 48 n. 5. We noted a sharp demarcation, saying, "In sum, perjury alone, absent allegation of involvement by an officer of the court ... has never been sufficient." Id. at 49."

Appellant has consistently claimed that the judicial process and the associated safety nets, involving officers of the court including but not limited to John F. Cullen, Michael Weingarten, Edward Bertozzi and Jason Monzack are corrupt and the resultant is a subversion of the efforts of the court to administer the case. (See Ca. No. 07-8038, Brief filed on 11/02/2007 pages 45-46, also pages E148-E150.)

APPELLANT'S RESPONSE TO BRIEF OF APPELLEE

The Appellee's brief regurgitates prior court orders and sanctions, as Appellee has done repeatedly throughout the appellate process, in an obvious attempt to pollute Appellant's assertion of due process and other rights in this Court. Prior orders and contempt orders cited by Appellee in his brief dated April 30, 2009, were built on a faulty foundation of misrepresentations by the Examiner, his attorney, the Chapter 11Trustee and the successor Chapter 7 Trustee.

Appellee Monzack also again, perhaps intentionally, dodges the issue as to his relation to the missing inventory, the missing personal property of Appellant, the missing yellow notebooks, the non production of videotapes, the non production of safety deposit box sign in and out cards as well as inventory discrepancies taken by Mr. Monzack himself as well as by others.

As pointed out in Appellant's prior briefs, the fees of Examiner Weingarten, and Trustee Cullen have obvious errors and raise many questions. They are intertwined and based on Bertozzi's activities and billings but the billings of Bertozzi in this regard are inexplicably (or perhaps conveniently) missing.

The citations in Appellee's Brief of prior orders and sanctions against Appellant fail to address the assertion by Appellant that those prior orders and sanctions were erroneously generated by the fraudulent misrepresentations of the trustees to the bankruptcy court.

Appellee's Exhibit A, The ORDER, dated July 3, 1991. This ORDER sanctions Appellant for seeking to enforce the Title 11, 364(c)(1) Agreement and ORDER, dated December 12, 1990. (See E282-E-296.)

NOTE: To date no accounting of the money advanced to Appellee Cullen by Eastland Bank has been provided to Appellant or others.

NOTE: To date no accounting of the assets of the estate sold by Appellee Cullen to repay money advanced by Eastland Bank under the 364(c)(1) Agreement has been made with the exception of $163,611.17 in total receipts shown on CHAPTER 11 TRUSTEE'S FINAL REPORT AND ACCOUNT OF RECEIPTS AND DISBURSEMENTS, dated 2/24/94. (See Exhibit G.)

NOTE: The proceeds from the sale of assets in the Bowers & Merena and Christies Auctions in June 1991, although contained in TRUSTEE'S FINAL REPORT, were not credited to Appellant by Judge Pettine in the sentencing computations. (See Supplemental Brief of Appellant dated December 27, 2008 in Ca. No. 08-189ML, par 34a. , E438-E444.)

NOTE: The Affidavit of Donald C. McQueen, Vice President of Eastland Bank, dated November 16, 1993 states that "...over $200,000 was used by the Trustee to collect, secure, store and safeguard the coins and tangible assets of Cumberland. Part of the expenditure by the bank was to pay the fees of the attorney for the Trustee." (See E445-E447.)

Appellee's Exhibit B, ORDER, Dated July 2, 1992. This court order sanctions Appellant the sum of $200,000 based upon the time records submitted by the Trustee Cullen, the Examiner Michael Weingarten, Counsel to the Examiner and the Trustee, Mr. Bertozzi.

NOTE: Trustee Cullen was forbidden by statute 11 U.S.C. §327 (f) to hire Mr. Weingarten, but Mr. Cullen did hire Mr. Weingarten.

NOTE: There are billing discrepancies between Mr. Bertozzi and Mr. Cullen. (See E387-E399.)

NOTE: Mr. Bertozzi has allegedly misplaced some of the billing documents.

NOTE: Mr. Weingarten's discarded billing records and "double billing" of the estate of Cumberland Investment Corporation and other estates in which Mr. Weingarten was serving as Trustee were the subject of First Circuit Court of Appeals Ca. No. 92-1780. (See Ca. No. 07-8038, Brief filed on 11/02/2007 page 12, paragraphs 5 & 6, also page E8.)

Appellee's Exhibit C, is a NOT FOR PUBLICATION opinion for the First Circuit Court of Appeals in Ca. No 93-1094.

NOTE: "On the basis of time records submitted by the trustee, the examiner and Eastland Bank, showing "expenses directly attributable to unnecessary litigation and/or extra judicial work generated by Mr. Chorney," the court ordered Chorney to pay $200,000 to the trustee as "partial reimbursement for the deliberate post-petition damage he has done to creditors."

NOTE: There are significant discrepancies with the time records of Trustee John Cullen, his attorney Edward Bertozzi and the Examiner Michael Weingarten.

NOTE: There are significant amounts of assets belonging to the estate and to Appellant that are missing. All attempts by Appellant to obtain an accounting of these assets have been unsuccessful.

NOTE: Videotapes, and the production of other discovery requested by Appellant from Mr. Weingarten, Mr. Bertozzi, and Mr. Cullen would have negated the reliance of Judge Votolato on the representations of these officers of the court as the basis for his factual conclusions.

NOTE: THE FINAL APPLICATION OF FORMER CHAPTER 11 TRUSTEE, JOHN F. CULLEN, FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES, dated October 26, 2007 indicates that Mr. Cullen coordinated a total of three transfers of estate assets. According to a description of general services Trustee Cullen rendered was that he "utilized three video and still photographers, as well as a stenographer, each of whom assisted the Trustee in keeping detailed records memorializing the transfer of estate assets." (See E213-E214.)

NOTE: Appellant obtained a copy of the transcript of the removal of the assets from the premises of Cumberland Investment Corporation from Allied Court Reporters on August 1994. (See Ca. No. 07-8038, Brief filed on 11/02/2007 paragraph 33 on page 22.)

NOTE: Appellant obtained copies of 19 videotapes as a result of an F.O.I.A. to the Executive Office of U.S. Attorneys on October 19, 1999, some six years after his criminal trial. (See Ca. No. 07-8038, Brief filed on 11/02/2007 paragraph 80 on pages 33-34.)

NOTE: The videotapes, photographs and transcripts of the second and third asset transfer of the estate (See E214) have not been provided to Appellant although this same information was requested from Trustee Cullen by Trustee Monzack in May 17, 1995. (See Ca. No. 07-8038, Brief filed on 11/02/2007 page 45, also pages E148-E150.)

Appellee's Exhibit D is an opinion of the First Circuit Court of Appeals in Ca., No. 02-1976 in which the Circuit Court upheld the District Court's summary dismissal of this appeal from an order of the bankruptcy court for reasons of lack of standing and barring effort of prior final orders and judgments.

NOTE: this case was appealed to the Supreme Court of the United States but was denied certiorari.

Appellee's Exhibit E is an order of the bankruptcy court dated 11/3/04 GRANTING MOTION TO STRIKE AND IMPOSING ADDITIONAL SANCTION

NOTE: This ORDER states that Appellant was "hindering the Trustee in performing his duty to conclude this case." More than four years have passed by and this case is still open.

Appellee's Exhibit F is a JUDGMENT upholding Exhibit E in paragraph 5. above for lack of jurisdiction.

NOTE: For reasons unknown to Appellant, Appellant admittedly did not appeal this judgment.

Appellee's Exhibit G is a Memorandum and Order of the District Court in Ca. No. 08-189ML, adopting the arguments of the Trustee and denying standing to Appellant.

NOTE: the basis for the underlying court order of the Bankruptcy Court was the testimony of the trustees which were adopted in full by the District Court. (See Brief of Appellant, dated March 27, 2009 CONCLUSION on pages 16, 17 concerning the untruthful testimony of Mr. Monzack and Mr. Cullen concerning the personal property of Appellant.)

LACK OF DUE PROCESS IS CONTINUOUS

Appellant reiterates that the denial of due process in the bankruptcy court is one basis for the Appellant being an "aggrieved party" with pecuniary interests and thus standing to raise various issues. Appellant has argued that the lack of due process shows a likelihood of injury in the future and cited City of Los Angeles v. Lyons, 461 U.S. 95 (1983). To further this argument, Appellant presents the following information and chronology of events:

On March 27, 2009, the very day that the Brief of Appellant was filed in Ca. No. 09-1117, Appellee Jason D. Monzack filed the FINAL REPORT in Bankruptcy Ca. No. 89-11051.

The United States Trustee, on March 27, 2009, within minutes of the filing of the FINAL REPORT, certified that report.

According to Rule 5009 of the Bankruptcy Code,

"If a Chapter 7...trustee has filed a final report and the final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered."

To comply with Rule 5009, Appellant, who is certainly a party in interest but has been restricted in filing motions with the clerk of the bankruptcy court, on April 14, 2009 sent a filing directly to Judge Votolato in accordance with the Court Order dated 11/3/04. (See Exhibit A.) The filing was a Motion and Memorandum in Objection to the Final Report. [Docket 1043.] (See Exhibit B.)

On April 14, 2009 Appellant mailed requests to Leonard De Pasquale, AUST to obtain an accounting of the prior administration of the case in accordance with Rule 2012(b)(2) as well as a copy of the summary of fees awarded to Trustees, Examiners and Professionals in accordance with Rule 2013(b). (See Exhibit C.)

On April 15, 2009 the RESTRICTED letter containing the above Motion in Objection (Exhibit B.) is signed for by C. Sweeny. (See Exhibit D.)

On April 15, 2009 a Notice of Hearing was scheduled for 4/30/09 at 10:00 AM [Docket #1045] Appellant saw this on his PACER account. (See Exhibit E.)

There was no mention of the Cullen Application Fee stated on the Hearing Notice (Exhibit E). Appellant at first thought what Judge Votolato stated on page 29 of the May 7, 2008 Hearing (E-501) was being ignored:

"So we'll see you again whenever the application for Mr. Cullen's fee together with the hearing on the trustee's final report." (sic) (Please note that "sic" is indicated here by Appellant since this is the exact language from the transcript and it would seem one or two words are needed to make the sentence grammatically correct.)

At a future point in time Appellant noticed that the Court Calendar for April 30, 2009 showed #951, the fee application of John F. Cullen as one of the 8 items to be heard on the Cumberland Investment Corporation case.

Had Appellant not seen this Notice of Hearing on PACER, he would not have had any knowledge of the Hearing scheduled for 4/30/09, nor would Appellant have filed an OBJECTION to the FINAL REPORT on April 14, 2009.

Had Appellant not reviewed PACER on 4/29/09, and seen that the HEARING was continued, he would have gone to said hearing on April 30, 2009.

PLEASE TAKE NOTICE OF THE FOLLOWING DOCUMENTS (F1 to F10):

> Local Rule Blank Form concerning NOTICE OF FINAL REPORT & ACCOUNT, TRUSTEE'S COMMISSION REQUEST AND CERTIFICATE OF SERVICE.
> NOTE: According to this Form, Appellant and others should have had a "twenty day notice of the hearing..."
>
> Notice of Hearing, [Doc 1045 filed 04/15/09 13:41:16 page 1 of 1]
>
> Notice of Hearing, [Doc 1046 filed 04/17/09 entered 04/18/09 01:18:01 page 1 of 2. Page 2 is a CERTIFICATE OF NOTICE. NOTE: Appellee Cullen is the only person noticed.
>
> Notice of Hearing, [Doc 1048 filed 04/26/09 entered 04/27/09 01:06:17 page 1 of 3. Pages 2 and 3 is a CERTIFICATE OF NOTICE serviced upon a total of 61 parties, including Appellant. NOTE: As of 04/30/09 at 1:30 PM, Appellant received Notice of Hearing to be held earlier that day at 10:00 AM.

Notice of Hearing, [Doc 1049 filed 4/28/09 entered 11:50:15 PAGE 1 OF 1.]

Notice of Continued Hearing to 5/13/09 at 10:00 AM, [Doc 1053 filed 04/29/09 entered 11:54:29 page 1 of 1.] received by Appellant on May 6, 2009.

In addition to the above references to Notice of Hearing, the court entered on the docket:

> [Doc 1048-1] Hearing Not Held (re: 956 Amended Application filed by Trustee Jason D. Monzack). Set down in error. (Lanni, Christine)
> (Entered: 04/28/2009)
> NOTE: Does this mean that documents 1045, 1046, 1048, 1049 listed above were set down in error.
> NOTE: Does this mean that all of the Court Calendar for April 30, 2009 for Cumberland Investment Corporation as listed below and including Doc 956 were also entered in error prior to being vacated:

1:89-bk-11051	Cumberland Investment Corporation

> Hearing- #1043 RE: Doc #1043; Trustee's Final Rpt/Acct-Asset entered by Gary Donahue (***Vacated***)

> Hearing: #951 RE: Doc #951; Application for Final Compensation entered by

John Cullen (***Vacated***)

Hearing: #1042 RE: Doc #1042; Amended Application entered by Jason Monzack (***Vacated***)

Hearing: #1044 RE: Doc #1044; US Trustee's Certificate of Review entered by Gary Donahue (***Vacated***)

Hearing: #956 RE: Doc #956; Amended Application entered by Jason Monzack (***Vacated***)

Hearing: #1030 RE: Doc #1030; Application for Final Compensation entered by Jason Monzack (***Vacated***)

Hearing: #1041 RE: Doc #1041; Amended Application entered by Jason Monzack (***Vacated***)

Hearing: #1025 RE: Doc #1025; Application for Final Compensation entered by Christine Lanni (***Vacated***)

or does it mean that an attempt was being made to circumvent due process and to obtain approval for final compensation without duly notifying the parties involved in this case and giving them proper notice of the April 30, 2009

Hearing?

[Doc 1050 filed 4/29/09 entered 11:37:29] Motion Petition for authorization to file Motion in Objection and Memorandum to the Final Report and Account Before Distribution Filed by Interested Party Harold Chorney.

NOTE: Motion and Memorandum mailed April 14, 2009 and signed for on April 15, 2009 (See Exhibit D.) was entered as being filed two weeks later on 4/29/09.

> [Doc 1051 filed 4/29/09 entered 11:40:44] Order for Written Position of Jason Monzack to Doc 1050 received by Appellant on May 6, 2009.
>
> [Doc 1052 filed 4/29/09 entered 11:46:02] Order for Written Position of U.S. Trustee to Doc 1050 received by Appellant on May 7, 2009.

CONCLUSION:

The bankruptcy court is not functioning correctly or the Appellant is being treated unfairly or both. There was a lack of notice of the Hearing scheduled for April 30, 2009. This lack of notice, intentional or not, is but one more example of the denial of due process to Appellant and to other parties of interest. The Appellant should have proper notice and ample time to Object to the FINAL REPORT of the Appellees just like any other party in interest. Furthermore, because Appellant is an aggrieved party, he should have the opportunity for discovery and redress of grievance.

Respectfully submitted,

Harold F. Chorney
16 Spring Drive
Johnston, R.I. 02919
401 934-0536

CERTIFICATION

I hereby certify that on this ______day of May 2009, I sent a copy of the above by first class mail to the following:

Edward J. Bertozzi, Jr., Esq.
Edwards Angell Palmer & Dodge LLP
2800 Financial Plaza
Providence, R.I. 02903

Jason D. Monzack
Kirshenbaum & Kirshenbaum
888 Reservoir Avenue
Cranston, R.I. 02910

Leonard DePasquale, AUST
Office of the U.S. Trustee
10 Dorrance Street
Providence, R.I. 02903

John F. Cullen, Esq.
Law Office of John F. Cullen, PC
17 Accord Park Drive, Ste 103
Norwell, MA 02061

John Fitzgerald, III, Esq.
United States Trustee
Thomas P. O'Neill, Jr. Federal Office Bldg.
10 Causeway Street, Room 472
Boston, MA 02222-1043

____

s/HAROLD F. CHORNEY

App. Q

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No.: 09-1117

IN RE: CUMBERLAND INVESTMENT CORPORATION

Debtor

HAROLD F. CHORNEY
Appellant

v.

JASON D. MONZACK
JOHN F. CULLEN
Appellees

ON APPEAL FROM A JUDGMENT OF THE FEDERAL DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

C.A. NO. 08-0189 ML

BRIEF OF APPELLEE, JASON D. MONZACK

Jason D. Monzack, Esq.
In his capacity as Chapter 7 Trustee
of Cumberland Investment Corporation
Kirshenbaum & Kirshenbaum
Attorneys at Law, Inc.
888 Reservoir Avenue
Cranston, RI 02910
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Dated: April 29, 2009

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SUMMARY OF CHAPTER 7 TRUSTEE'S ARGUMENT

Harold F. Chorney ("Chorney") lacks standing to appeal as the challenged order denying Chorney's motion to clarify first and final application for fees and expenses of Edwards Angell Palmer & Dodge LLP ("Edwards & Angell") and the awarding of fees and expenses to Edwards & Angell does not directly and adversely affect Chorney's pecuniary interests. Chorney is not entitled to receive any funds from the subject bankruptcy estate; therefore, any increase or decrease in the amount awarded to Edwards & Angell will not affect Chorney. The remaining issues which Chorney seeks to raise on appeal have been previously decided by prior final orders and judgments.

ARGUMENT

I. Standard of Review

Appellee Jason D. Monzack contends that Chorney does not have standing to challenge the subject bankruptcy court order and the subsequent Judgment entered by the United States District Court for the District of Rhode Island on December 18, 2008 affirming the orders of the Bankruptcy Court. In addition, Appellee contends that all issues, other than the fee application of Edward & Angell, have been previously decided by prior final orders and judgments. If Chorney has standing to challenge the fee award to Edwards & Angell, then abuse of discretion is the applicable standard of review. See Prebcor v. Collins (In re I Don't Trust), 143 F.3d 1 (1st Cir. 1998) (per curiam). In In re DN Associates, 3F.3d 512, (1st Cir.1993) the Court stated that

"When we scrutinize factual determinations and discretionary judgments made by a bankruptcy judge, such as may be involved in calculating and fashioning appropriate fee awards, we give considerable deference to the bankruptcy court...This observation is a reiteration of what Judge Brody noted in his affirmance of the instant bankruptcy court decision that [such] courts are traditionally granted broad discretion in determining reasonable fee awards."

Casco Northern Bank, N.A. v. DN Associates, 160 B.R. 20, 22 (D.Me. 1993)

(citing In re Casco Bay Lines, Inc., 25 B.R. 747, 753 (Bankr. App. 1st Cir. 1982))."

II. Introduction: Chorney's Prior Conduct

One cannot fully comprehend Chorney's present appeal without taking into consideration his past conduct. A sampling of how Chorney's conduct in this case has been characterized by this and other courts follows:

In its July 3, 1991 Order denying Chorney's motion to hold examiner in contempt, the Bankruptcy Court stated in part that

"...Chorney has deliberately and continuously action in bad faith to obstruct and to hinder the efficient administration of the estate, which action has been very damaging, expense-wise, to the estate and it creditors..."

In its July 2, 1992 Order entered after the bankruptcy court's hearing to determine whether Chorney should be "adjudged in contempt and sanctioned for....continuous, deliberate, and unjustified interference with the orderly progress of this bankruptcy case" the Bankruptcy Court stated in part that

"...In prior proceedings we have found that Chorney has, inter alia, filed frivolous pleadings, willfully interfered with and obstructed the administration of the case, and generally and in bad faith abused the bankruptcy process, causing the estate and its creditors significant economic harm.... See In re Cumberland Investment Corp., BK No. 89-11051, slip op. at 1-2 (Bankr. D.R.I. July 3, 1991). Our July 3, 1991 order ...clearly expressed the Court's exasperation with Mr. Chorney's conduct..." and that there

"... was unfortunately an already too familiar pattern of obstructionist behavior by Mr. Chorney. For example...many frivolous pleadings were filed and extensively litigated, with the intent and effect of impeding the administration of an estate already left in shambles by Chorney...."

The Court then went on to

"...adjudge Harold Chorney to be in continuous, willful contempt, and order him to pay $200,000.00 to the Trustee, as partial reimbursement for the deliberate post-petition damage he has done to creditors..."

The First Circuit's September 23, 1993 non published per curiam opinion, Chorney v. Weingarten, 7 F.3d 218, 1993 WL 372751 (C.A. 1 (R.I.)), affirmed this Court's affirmance of the July 2, 1992 bankruptcy court order finding Mr. Chorney in civil contempt. The First Circuit's opinion was issued by then Chief Judge Breyer together with Circuit Judges Selya and Boudin. The First Circuit opinion relied on the bankruptcy court's characterization of Mr. Chorney's conduct including that

"...many frivolous pleadings were filed and extensively litigated, with the intent and effect of impeding the administration of an estate already left in shambles by Chorney. ...The most damaging consequences of Chorney's incomprehensible behavior, however, is the incredible amount of needless expense that has been heaped upon the estate, and ultimately, of course, upon creditors. ....All of this waste has been caused unnecessarily by Harold Chorney."

and that

"...Chorney's brief here denies the accuracy of the judge's factual conclusions and argues that he is the victim of retaliation for his criticisms of improprieties by the judge, trustee and examiner. In support of his denials and blame shifting, however, he points only to previous appellate briefs in this court and elsewhere which recite the same conclusions and to selected excerpts from the record. ....the material he offers barely provides even a glancing basis for his factual denials and no concrete support for his accusations. The selectivity of his citations, incoherent or indistinct purposes for many record references, and his repeated blurring of temporally distinct events, only serves to confuse and obfuscate the issues."

On November 3, 2004 the Bankruptcy Court's Order (copy attached to Monzack's brief as pages E-1 through E-4 to ADDENDUM) stated in part that

"...Chorney's hyperactivity and ludicrous conduct throughout this case is marked by his incessant acts of bad faith and abuse of the system from the inception of this bankruptcy in 1989. Very early on, it was determined that "Chorney has deliberately and continuously acted in bad faith to obstruct and to hinder the efficient administration of the estate, which action has been very damaging, expense-wise, to the estate and its creditors." *In re Cumberland Investment Corp.*, BK No. 89-11051, slip op. at 1-2 (Bankr.D.R.I. July 3, 1991). As a result,

Chorney was prohibited from intervening or "otherwise participat[ing] in proceedings relating to sales or other disposition of estate assets." *Id.* In addition, in 1992 a civil contempt sanction was imposed in the amount of $200,000.00 against Chorney on account of his bad faith and abuse of the bankruptcy process. *In re Cumberland Investment Corp.*, Bk No. 89-11051, slip op. at 1-2 (Bankr. D.R.I. July 2, 1992), aff'd, 7 F. 3d 218 (1st Cir. 1993), cert denied, 510 U.S. 1200 (1994). This sanction was calculated to reimburse the estate for just a part of the unnecessary expense occasioned by Chorney's aberrant behavior. *Id.* at 4. Obviously undeterred by this sanction, Chorney continues, some twelve years later, to file frivolous pleadings which add expense and delay in the closing of this 1989 case.

By filing the instant motion and requests for admissions, Chorney has directly violated the 1991 injunction.

Additionally, in January 2002, Chorney filed a similar request seeking an accounting of assets, which was denied on March 14, 2002, based on lack of standing and the 1991 injunction order. ... That decision was sustained on appeal. *See In re Cumberland Inv. Corp.*, 2003 WL 214357 (1st Cir.), *cert denied*, 123 S.Ct. 579 (2003). Finally, in an effort to leave no stone unturned, I asked the United States Trustee to review the Trustee's Accounting to date to determine whether any of Chorney's allegations have merit. The United States Trustee responded in late August 2004 stating that she was satisfied with the Trustee's Accounting. ... .

Accordingly, because these issues have been long ago decided against Mr. Chorney, because he lacks standing, and because he is enjoined from participating in this case regarding the disposition of assets, the Trustee's request to strike the instant motion and request for admissions are GRANTED.

Also, because the instant filings are frivolous and are hindering the Trustee in performing his duty to conclude this case, it is further ordered that, effectively immediately, the Clerk of Court shall decline to accept any filings from Harold Chorney, unless such filing has first been presented to Chambers and is specifically authorized by the Court for filing. FN1 *See* 11 U.S.C. §105(a); *see also*, Mayfield v. Collins, 918 F.2d 560 (5th Cir. 1990).

In its footnote the Bankruptcy Court added

"I considered imposing additional monetary sanctions, however, the $200,000.00 contempt sanction remains unpaid and appears to have little deterrent effect on Chorney." See 2004 WL 2616318 (Bkrtcy. D.R.I.)

III. Chorney's Present Appeal

The Chapter 7 Trustee filed his final report and account to be approved by the U.S. Trustee and the bankruptcy court. Incidental to the filing of the report, John F. Cullen and Edwards Angell Palmer & Dodge LLP filed applications for fees and expenses. In response to these fee requests, Chorney filed his motions to clarify first and final application for fees and expenses of Edwards Angell Palmer & Dodge, LLP and to assist and help the Court concerning the first and final application for fees and expenses of Edwards Angell Palmer & Dodge LLP plus his offer of proof concerning standing. It is the bankruptcy court's approval of the fee of Edwards Angell Palmer & Dodge LLP, the denial of Chorney's motion to clarify, the issue of Chorney's standing and the subsequent Judgment entered by the United States District Court for the District of Rhode Island on December 18, 2008 affirming the orders of the Bankruptcy Court (copy attached to Monzack's brief as pages G-1 through G-8 to ADDENDUM) that is the subject of Chorney's appeal.

IV. Chorney Lacks Standing

Whether the bankruptcy court granted the fee application of Edwards Angell Palmer & Dodge LLP in full or denied it in full would not have any affect on the funds Chorney would receive from this bankruptcy estate. He receives nothing in any case. Chorney did not file a proof of claim in this bankruptcy proceeding and therefore does not have the standing of a creditor. Chorney signed the subject bankruptcy petition as the debtor's President. All the funds in this bankruptcy estate will be paid either for Chapter 7 administrative expenses, Chapter 11

administrative expenses or a small, less than 1% dividend, to unsecured creditors. The funds to be paid to unsecured creditors is not affected by any fee award as pursuant to prior orders of the bankruptcy court, a sum was set apart for the benefit of unsecured creditors, which sum is not increased or decreased by the allocation of funds among administrative claimants. Chorney is not entitled to any funds from the bankruptcy estate.

Bankruptcy standing was considered by the United State Bankruptcy Appellate Panel of the First Circuit in In re Great Road Serv. Ctr., Inc., 304 B.R. 547 (1st Cir. BAP 2004) where the court stated:

"Bankruptcy standing is narrower than Article III standing. Spenlinhauer v. O'Donnell, 261 F.3d 113, 117 (1st cir.2001); Cult Awareness Network, Inc. v. Martino (In re Cult Awareness Network, Inc.), 151 F.3d 605, 607 (7th Cir. 1998). Only a "person aggrieved" has standing to challenge a bankruptcy court order; the challenged order must directly and adversely affect the appellant's pecuniary interests. *Spenlinhauer*, 261 F.3d at 117-18. A "person aggrieved" is one whose property is diminished, burdens are increased, or rights are impaired by order on appeal. *In re El San Juan Hotel*, 809 F.2d 151, 154 (1st Cir.1987). Chapter 7 debtors generally lack standing to object to an order concerning distribution of estate assets, because chapter 7 debtors usually lack a pecuniary interest in estate assets: No matter how the estate's assets are distributed by the trustee, no assets will revert to the debtor. 11 U.S.C. §726(a) (6); Cult Awareness, 151 F.3d at 607.

...We also reject Great Road's suggestion that it has standing to assert fraud upon the court even though it is not a "person aggrieved" in the usual sense."

Chorney has no pecuniary interest and therefore has no standing. Chorney's lack of good faith is clearly demonstrated by Chorney's attempt to manufacture a basis for standing. In his offer of proof Chorney states that:

"Despite the fact that Petitioner has presented pleadings concerning the missing assets to this court, the district court and the first circuit, Petitioner had argued his corporate ownership in the seized property and not argued the fact that some of the property seized, of significant value, either belonged to him personally or was non corporate property in which Petitioner has an interest."

Eighteen and a half (18 ½) years after this case was filed Chorney now apparently asserts that he has a personal interest in "some of the property seized." This statement demonstrates that Chorney will make any statement and make any claim of misconduct that he believes will serve to keep this case open. This statement by Chorney demonstrates that his allegations remain "totally unsupportable", "fabricated", "out of touch with reality" and "frivolous" as characterized by the First Circuit in 1993.

In what can most charitably by characterized as "chutzpah", Chorney, in his statement of the issues, uses as the basis for his "standing as an aggrieved party with a pecuniary interest..." the Bankruptcy Court's July 2, 1992 Order in which the Bankruptcy Court adjudged

> "...Harold Chorney to be in continuous, willful contempt, and order him to pay $200,000.00 to the Trustee, as partial reimbursement for the deliberate post petition damage he has done to creditors."

In this same order the Bankruptcy Court stated that Chorney

> "...continued, post petition, to advertise fraudulently after both agreeing to and being ordered to desist, ...coin and other inventory values were grossly and fraudulently overstated to the Court, the Trustee, and to creditors; many frivolous pleadings were filed and extensively litigated, with the intent and effect of impeding the administration of an estate already left in shambles by Chorney; ...The most damaging consequences of Chorney's incomprehensible behavior, however, is the incredible amount of needless expense that has been heaped upon the estate, and ultimately, of course, the creditors. ....All of this waste has been caused unnecessarily by Harold Chorney".

Chorney's claim that his own misconduct serves as the basis for his standing while consistent with Chorney's past behavior, should be dismissed out of hand. The Bankruptcy Court's order of July 2, 1992 holding Mr. Chorney in contempt is not the subject of Chorney's appeal, he has appealed the Bankruptcy Court's approval of the fee of Edwards Angell Palmer & Dodge LLP, the denial of Chorney's motion to clarify and the determination that Chorney does not have standing to challenge the fee award to Edwards Angell Palmer & Dodge LLP.

V. The Issues Which Chorney Seeks To Raise On Appeal Have Been Previously Decided By Prior Final Orders and Judgments

In the Bankruptcy Court decision and order of November 3, 2004, In re: Cumberland Inv. Corp., 2004 WL 2616318, the Court stated:

> ...in January 2002, Chorney filed a ...request seeking an accounting of assets, which was denied on March 14, 2002, based on lack of standing and the 1991 injunction order. That decision was sustained on appeal. See In re Cumberland Inv. Corp., 2003 WL 214357 (1st Cir.), cert. denied, 123 S.Ct. 579(2003)....

The motion filed by Chorney in January, 2002 and denied by the bankruptcy court on March 14, 2002 was titled "motion in objection to abandoning assets without an accountability of assets by the Chapter 7 Trustee, Jason D. Monzack".

On March 8, 2004, Chorney filed his motion "to clarify the class action award from the lawsuit against Christy's Public Auction and require the Chapter 7 Trustee, Jason

Monzack, Esq., to provide a complete and detailed accounting of estate assets," a request similar to the January, 2002 motion. See In re Cumberland Inv. Corp., 2004 WL 2616318. The Trustee's motion to strike the 2004 motion was granted

"...because these issues have been long ago decided against Mr. Chorney, because he lacks standing, and because he is enjoined from participating in this case regarding the disposition of assets...." In re Cumberland Inv. Corp., 2004 WL 2616318.

Notwithstanding the fact that Chorney is appealing the denial of his motion to clarify first and final application for fees and expenses of Edwards Angell Palmer & Dodge LLP, in his statement of the issues he stated "the Bankruptcy Court has denied due process to the Petitioner by allowing the unfair taking of his personal property in violation of the Fifth Amendment..." and has also challenged the validity of the Bankruptcy Court's November 3, 2004 order. That order was never appealed to the U.S. District Court and certainly cannot be timely appealed now, almost five (5) years after its entry. The November 3, 2004 order has never been the subject of a properly filed notice of appeal. On November 2, 2007 Chorney filed a motion to appeal and/or amend the November 3, 2004 Bankruptcy Court order directly with the United States Court of Appeals for the First Circuit. That motion was dismissed by the First Circuit on August 5, 2008 for lack of jurisdiction (copy of Judgment dismissing Chorney's appeal attached hereto as page F-1 to ADDENDUM). The November 3, 2004 order and the other issues referenced by Chorney in his brief appear to be unrelated to the issues referenced in Chorney's notice of appeal, i.e. the Bankruptcy Court Judgment of May 8, 2008 denying Chorney's motion to clarify and denying Chorney standing to oppose the fee application of Edwards & Angell. In his brief Chorney does not appear to be arguing the issues it appeared he was trying to raise on appeal in his notice of appeal. Chorney's brief lays bare his continuing strategy of filing pleadings that are "totally unsupportable", "fabricated", "out of touch with reality" and "frivolous" in an attempt to raise issues long ago decided against him. See Chorney v. Weingarten, 7 F.3d 218, 1993 WL 372751 (C.A. 1 (R.I.)) (non published per curiam opinion)(copy attached to Monzack's brief as pages C-1 through C-10 to ADDENDUM). This appeal by Chorney continues his long standing pattern of taking appeals from court decisions that Chorney views as adverse to his interests. For two of his most recent appeal dispositions See Chorney v. Republic Credit Corporation, 2003 WL 21435745 (C.A. 1 (R.I.))(appeal dismissed for lack of standing and the barring effect of prior final orders and judgments)(copy of June 20, 2003 slip copy affirmation by United States Court of Appeals for the First Circuit attached hereto as page D-1 to ADDENDUM) and In re: Cumberland Investment Corporation, United States Court of Appeals for the First Circuit, Case No. 07-8038 (appeal dismissed for lack of jurisdiction)(copy of August 5, 2008 Judgment attached hereto as page F-1 to ADDENDUM).

This is another attempt by Chorney to seek an accounting of estate assets and to challenge the Bankruptcy Court's authority, "...issues long ago decided against Mr. Chorney...."

CONCLUSION

Appellee requests that this Court dismiss this frivolous appeal. The history of this case clearly demonstrates Chorney's pattern of bad faith. But regardless of Chorney's motives, it is clear that Chorney lacks standing and offers nothing but conclusary statements as the basis of his appeal. See In re Great Road Serv. Ctr., Inc., 304 B.R. 547 (1st Cir. BAP 2004). Appellee considered filing a separate motion for sanctions, but decided against it as Chorney's history in this case clearly demonstrates that such sanctions have no deterrent effect on him.

WHEREFORE, Appellee requests that this Honorable Court enter its Order dismissing Chorney's appeal and grant such other and further relief as this Court deems meet and just.

Respectfully submitted,

/s/ Jason D. Monzack, Esq.

Jason D. Monzack, in his

capacity as Chapter 7 Trustee, Appellee

Jason D. Monzack, Esq., #1445

KIRSHENBAUM & KIRSHENBAUM

Attorneys at Law, Inc.

888 Reservoir Avenue

Cranston, RI 02910

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(401) 943-8097 Fax

CERTIFICATION

I, the undersigned, hereby certify that on the 29TH day of April, 2009, I sent a copy of BRIEF OF APPELLEE, Jason D. Monzack, in his capacity as Chapter 7 Trustee of Cumberland Investment Corporation by first class mail to the Edward J. Bertozzi, Jr., Esq., 2800 Financial Plaza, Providence, RI 02903, U.S. Trustee, Room 910, 10 Dorrance Street, Providence, RI 02903, Gary Donahue, Esq., U.S. Trustee's Office, 10 Causeway Street, Boston, MA 02222 and Harold Chorney, 16 Spring Drive, Johnston, RI 02919.

/s/ Crystal Robillard

ADDENDUM

A. July 3, 1991 Order of the Bankruptcy Court for the District of Rhode Island A-1 through A-2

B. July 2, 1992 Order of the Bankruptcy Court for the District of Rhode Island B-1 through B-5

C. Chorney v. Weingarten, 7 F.3d 218, 1993 WL 372751 (C.A. 1(R.I.)) (non published per curiam opinion) C-1 through C- 10

D. June 20, 2003 per curiam opinion of United States Court of Appeals for the First Circuit, Chorney v. Republic Credit Corporation, 2003 WL 21435745 (C.A. 1(R.I.)). D-1

E. November 3, 2004 Order of the Bankruptcy Court for The District of Rhode Island E-1 through E-4

F. August 5, 2008 Judgment of United States Court of Appeals For the First Circuit, In re: Cumberland Investment Corporation Case No. 07-8038 F-1

G. December 18, 2008 Order of the United States

District Court for the District of Rhode Island G-1 through G-8

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF RHODE ISLAND

In re: CUMBERLAND INVESTMENT CORPORATION

Debtor

BK No. 89-11051

ORDER

On or about May 21, 1991, Harold F. Chorney filed a Motion to Hold Examiner in Contempt, and after notice to interested parties a hearing was held on May 22, 1991, whereat Chorney was represented by counsel who cross-examined Michael Weingarten, Examiner, and who argued on behalf of Chorney. Based upon the evidence presented at said hearing, and after recalling and upon consideration of the record in this case of numerous earlier hearings attended by Chorney and others, including without limitation the Examiner, this court finds as a fact and concludes as a matter of law that:

Chorney's Motion to Hold the Examiner in Contempt is frivolous and not well founded;

Chorney has deliberately and continuously acted in bad faith to obstruct and to hinder the efficient administration of the estate, which action has been very damaging, expense-wise, to the estate and its creditors;

These finding as to abuse of the process apply as well to Gerald Aubin.

Based on the entire record in this case, it is ORDERED:

That Chorney's Motion is DENIED;

That, henceforth, Chorney and Aubin will no longer be permitted to intervene or otherwise participate in proceedings relating to sales or other disposition of estate assets, and are not entitled to any notice other than that received by general creditors;

Any orders previously entered by this Court which are contrary to or in conflict with the letter and spirit of this order, including that certain bench ruling of May 7, 1991 granting, in part, Chorney's Motion to Compel discovery relating to Weingarten's fee application, are VACATED;

Because of their willful interference with the orderly and economic administration of this estate, and for their unjustified waste of the time of this Court, and of numerous other par ties, Chorney and Aubin are ORDERED TO SHOW CAUSE, on July 25, 1991 at 2:00 PM, why they should not be adjudged in contempt, and/or ordered to pay sanctions.

Dated at Providence, Rhode Island, this 3rd day of July 1991.

s/Arthur N. Votolato, Jr.

U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF RHODE ISLAND

In re: CUMBERLAND INVESTMENT CORPORATION

Debtor

BK. No. 89-11051

Chapter 11

ORDER

Heard on September 17, 1991 on the Court's Order to Show Cause why Harold Chorney and Gerald Aubin[1] should not be adjudged in contempt and sanctioned for their continuous deliberate, and unjustified interference with the orderly progress of this bankruptcy case.

In prior proceedings we have found that Chorney has, inter alia, filed frivolous pleadings, willfully interfered with and obstructed the administration of the case, and generally and in bad faith abused the bankruptcy process, causing the estate and its creditors significant economic harm. See In re Cumberland Investment Corp., BK No. 89-11051, slip op. at 1-2 (Bankr. D.R.I. July 3, 1991). Our July 3, 1991 order, which precipitated the instant show cause hearing, clearly expressed the Court's exasperation with Mr. Chorney's conduct.

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[1] Because the evidence presented at the September 17, 1991 hearing does not support a finding of contempt as to Gerald Aubin, we do not enter an order against him at this time. This is not to say that Mr. Aubin's pre and post-petition conduct (in concert with Chorney) does not deserve sanctions. Our ruling here only reflects the lack of such evidence at the September 17, 1991 hearing.

At the show cause hearing, the Trustee, John Cullen, Esq., described what was unfortunately an already too familiar pattern of obstructionist behavior by Mr. Chorney.[2] For example: he continued, post-petition, to advertise fraudulently after both agreeing to and being ordered to desist; to cure a glaring security problem, the Trustee moved for and obtained a Court order to physically eject Chorney from the Debtor's business premises (where he was actually living),[3] After repeated broken promises to vacate;[4] CIC records were allegedly concealed and/or destroyed; coin and other inventory values were grossly and fraudulently overstated to the Court, the Trustee, and to its creditors; many frivolous pleadings were filed and extensively litigated, with the intent and effect of impeding the administration of an estate already left in shambles by Chorney, information concerning the identity of redemption coin holders was wrongfully withheld on the baseless ground of "confidentiality," even after disclosure was ordered by the Court, and so on.

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[2] As the result of the many pleadings and ensuing hearings both during and after the debtor-in-possession period, the Court was already acquainted with much of what the Trustee had to say, and we find his testimony to be accurate, but by no means all-inclusive of Chorney's legal and ethical transgressions. A more complete recital of Chorney's misbehavior throughout this case is chronicled in the case docket, annexed as Appendix A.

[3] Chorney's apartment was literally surrounded by inventory, allowing a real-life "fox-guarding-the-chicken coup" scenario/ His bed was literally within inches of the vault and its contents.

[4] The Court order was ignored, however, and the Trustee ended up, instead , moving the assets to another location, at a cost to the estate of approximately $95,000.

The most damaging consequence of Chorney's incomprehensible behavior, however, is the incredible amount of needless expense that has been heaped upon the estate, and ultimately, of course, upon the creditors. The Trustee's and the Examiner's duties (and their fees and expenses) have been increased; secured creditors, long-delayed in exercising their rights, have seen the interest part of their claims escalate, and the likelihood of a meaningful distribution to hundreds of unsecured creditors and redemption coin holders has been practically eliminated. All of this waste has been caused unnecessarily by Harold Chorney.

The time records submitted by the Trustee, the Examiner, and Eastland Bank indicate that fees and expenses directly attributable only to the unnecessary litigation and/or extra-judicial work generated by Mr. Chorney, as of September 1991, total $381,463, broken down as follows: Trustee - $19,461.50; [5] Counsel to Trustee and Examiner - $20,905; Examiner - $250,000; Eastland Bank - $90,844. Based upon the entire record, which need not be recited here,[6] we adjudge Harold Chorney to be in continuous, willful contempt, and order him to pay $200,000 to the Trustee, as partial reimbursement for the deliberate post-petition damage he has done to creditors. Allowing Chorney the benefit of any possible doubt, the above-ordered sanction is a low-end estimate of the financial harm he has caused, and will not even begin to compensate creditors for behavior which seems designed by Chorney to bring everybody[7] down with him, including former customers upon whom he had already inflicted great pre-petition financial harm.

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[5] Although expense summaries submitted to the Court indicate the amount of $19,713, our compilation of the entries submitted totals $19,461.50.

Finally, our actions herein are purposefully crafted to be compensatory and not punitive in nature, and in that regard feel that we have ruled conservatively, and mindful of the District Court's recent discussion of the parameters of Bankruptcy Court authority in the areas of sanctions and civil contempt, in In re Microbiological Sciences, Inc., C.A. No. 91-0341 P, slip op. at 5 (D.R.I. October 8, 1991). See In re Power Recovery Systems, Inc., 950 F.2.d 798, 802-03 (1st Cir. 1991)(bankruptcy courts clearly have civil contempt authority to compensate for losses sustained or to coerce compliance with court orders); see also In re Magwood, 785 F.2d 1077, 1081

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[6] For the details of Mr. Chorney's persistent efforts to stonewall these proceedings, see Appendix A.

[7] Ironically it is the professionals in the case, against whom Mr. Chorney exhibits his most vehement hostility, who will ultimately benefit the most, financially, from his conduct,

(D.C. Cir. 1986); In re Kavo, 760 F.2d 343, 351 (1st Cir. 1985).

Enter Judgment consistent with this opinion.

Dated at Providence, Rhode Island, this 2nd day of July, 1992.

s/Arthur N. Votolato

U.S. Bankruptcy Judge

United States Court of Appeals

For the First Circuit

No. 93-1094

HAROLD F. CHORNEY,

Appellant

v.

MICHAEL WEINGARTEN, ET AL.,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF RHODE ISLAND

(Hon. Ernest C. Torres, U.S. District Judge)

Before

Breyer, Chief Judge

Selya and Boudin, Circuit Judges.

Harold F. Chorney on brief pro se.

Edward J. Bertozzi, Jr. and Edwards & Angell, on brief
for appellee John F. Cullen, Trustee.

September 23, 1993

Per Curiam. Harold F. Chorney challenges the district court's affirmance of a bankruptcy court order of July 2, 1992, finding him in civil contempt for a "continuous, deliberate, and unjustified interference with the orderly progress of this bankruptcy case," and ordering him to pay $200,000 compensation to the Trustee. We affirm.[1]

The bankruptcy proceeding from which the instant appeal arises has a long and tangled history. The docket entries alone consume almost 79 pages as of the date of the contempt order challenged here. On this appeal we have been provided with a partial record consisting primarily of select materials generated in 1991 and 1992. The following background facts are culled from three earlier published opinions of the courts below. In re Cumberland Inv. Corp., 116 B.R. 353 (Bankr. D.R.I. 1990); In re Cumberland Inv. Corp., 118 B.R. 3, 4 (Bankr. D.R.I. 1990); In re Cuberland Inv. Corp., 133 B.R. 275 (D.R.I. 1991).

Debtor, Cumberland Investment Corporation ("CIC"), a wholly owned Rhode Island subsidiary of a Canadian corporation, Wescap Enterprises, Ltd., was in the business of buying and selling numismatic coins and stamps. Chorney was a principal of CIC and chief executive officer of Wescap. Eastland Bank was the major secured creditor.

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[1] Chorney's notice of appeal refers to the district court's order of January 8, 1993 in the singular. There were two orders entered that day, one dismissing the appeal on the merits, the other dismissing a motion for reconsideration based on "new evidence." The issues designated show that only the first order is contested.

In November, 1989, Eastland and two other creditors petitioned CIC into bankruptcy. About a month later, CIC converted the Chapter 7 involuntary petition into a voluntary Chapter 11 proceeding. Judge Votolato initially denied an Eastland motion for appointment of a Chaper 11 trustee, instead authorizing appointment of an examiner. Pending the outcome of the examiner's investigation, CIC was restrained from selling any coins without court approval.

There ensued seven months of investigation, a series of five reports from the examiner, and at least eleven days of contested hearings and motions by both sides. On the basis of the evidence thus generated, which reflected a "pervasive, broad course of debtor misconduct' and the debtor's "repeated failure to respond adequately to an overwhelming amount of negative evidence," the judge reversed course. In re Cumberland Inv. Corp., 118 B.R. at 4-5, 6. He granted a renewed motion for appointment of a trustee, expressing regret that he had earlier denied it.

The court simultaneously ordered the immediate discharge of all CIC employees and three principals, including Chorney. In re Cumberland Inv. Corp., 118 B.R. at 7-8. Among the misdeeds leading to the discharges, the court found that Chorney and his agents had purposely delayed the bankruptcy process through shifting misrepresentations about corporate assets, unauthorized and transparently fraudulent business operations, and circumvention of the court's injunction against coin sales. In re Cumberland Inv. Corp., 118 B.R. at 4-7.

Shortly before the decision to appoint a trustee, the court had also held hearings over a five-day period on a CIC motion to strike one of the examiner's reports. In that motion, Chorney had alleged examiner bias, conflict of interest, slander, a conspiracy between the examiner and Eastland to misrepresent CIC's affairs, and inventory switches by Eastland. From the evidence presented there, the court questioned the debtor's good faith, concluding that Chorney's allegations were "totally unsupportable," "fabricated," and "out of touch with reality." In re Cumberland Inv. Corp., 116 B.R. at 354. The district court affirmed both orders, finding the bankruptcy judge's analysis "well supported" by the evidence. In re Cumberland Inv. Corp., 133 B.R. at 279, 280.

In the nine months following the trustee's appointment, the bankruptcy court docket sheet shows 234 entries. Among them are a variety of motions brought by the trustee, examiner and Eastland seeking orders directing Chorney to cooperate or to refrain from interference with the bankruptcy process.

The proceedings immediately precipitating this appeal began on May 21, 1991, when Chorney moved to adjudge the examiner in contempt. The sole basis for this motion was an allegation that the examiner had failed to use his "best efforts" to obtain agreement among the parties on a method for sales of assets as required by an earlier court order. A hearing was held and testimony taken which showed the motion to be unfounded and wholly frivolous.

On July 3, 1991, in an order dismissing the examiner contempt motion, Judge Votolato observed that over the course of the bankruptcy proceedings Chorney had "deliberately and continuously acted in bad faith to obstruct and to hinder the efficient administration of the estate." He sua sponte ordered Chorney to show cause why he should not be adjudged in contempt for his "willful interference with the orderly and economic administration of this estate and (his) unjustified waste of the time of this Court and of numerous parties."[2]

A hearing on the show cause order was held on September 17, 1991. Testimony at that hearing spans 80 transcript pages. Judge Votolato continued the matter without a finding in the hope that a change in Chorney's behavior or attitude might warrant further consideration. After a status conference on June 18, 1992 revealed no change[3] the court issued the contempt order appealed here. In addition to the entire record as reflected in the docket entries, the court relied on the trustee's summary of recent events at the show cause hearing.

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[2] The order also barred Chorney from further participation or intervention in judicial proceedings relating to the disposition of the estate, except on the same basis as a general creditor.

(The) Trustee, John Cullen, Esq., described what was unfortunately an already too familiar pattern of obstructionist behavior by Mr. Chorney (footnote omitted). For example, he continued, post-petition, to advertise fraudulently after both agreeing to and being ordered to desist; to cure a glaring security problem, the Trustee moved for and obtained a Court order to physically eject Chorney from the Debtor's business premises (where he was actually living, (*) after repeated broken promises to vacate; (**)CIC records were allegedly concealed and/or destroyed; coin and other inventory values were grossly and fraudulently overstated to the Court, the Trustee, and to the creditors; many frivolous pleadings were filed and extensively litigated, with the intent and effect of impeding the administration of an estate already left in shambles by Chorney; information concerning the identity of redemption coin holders was wrongfully withheld on the baseless ground of 'confidentiality,' even after disclosure was ordered by the Court, and so on.

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[3] At the status conference the judge learned that in the intervening months Chorney, through Wescap, filed a state court lawsuit reciting the same alleged coin switches by Eastland which the bankruptcy court had earlier determined to be a fabricated charge. The suit was removed to a federal court and Eastland advised that it was preparing a motion to dismiss the suit on collateral estoppels grounds. Hearing of June 18, 1992, Tr. At 2-4. Further, liquidation of the estate had been forced to a halt due to a pending criminal investigation into Chorney's conduct. Tr. At 6-8.

During the same period Chorney also took four appeals to the district court from bankruptcy orders. All four were dismissed with prejudice on the merits. Cumberland Inv. Corp., Nos. 91-0594, 91-0595, 91-0596, 91-0604, slip op. (D.R.I., June 5, 1992). Chorney then attempted to further appeal three of the orders to this Court, which dismissed them as improperly taken from interlocutory orders, Chorney v. Eastland Bank, Nos. 92-1780, 81, 82, slip. op. (1st Cir. Feb. 5, 1993).

* Chorney's apartment was literally surrounded by inventory, allowing a real-life "fox-guarding-the-chicken-coup" scenario. His bed was literally within inches of the vault and its contents.

** The Court order was ignored, however, and the Trustee ended up, instead, moving the assets to another location, at a cost to the estate of approximately $95,000.

The most damaging consequence of Chorney's incomprehensible behavior, however, is the incredible amount of needless expense that has been heaped upon the estate, and ultimately, of course, upon the creditors. The Trustee's and Examiner's duties (and their fees and expenses) have been increased; secured creditors, long-delayed in exercising their rights, have seen the interest part of their claim escalate; and the likelihood of a meaningful distribution to hundreds of unsecured creditors and redemption coin holders has been practically eliminated. All of this waste has been caused unnecessarily by Harold Chorney. In re Cumberland Inv. Corp., No. 89-11051, slip op., at 2-3 (Bankr. D.R.I. July 2, 1992).

On the basis of time records submitted by the trustee, the examiner and Eastland Bank, sowing "expenses directly attributable to unnecessary litigation and/or extra judicial work generated by Mr. Chorney," the court ordered Chorney to pay $200,000 to the trustee as "partial reimbursement for the deliberate post-petition damage he has done to creditors." In re Cumberland Inv. Corp., No. 89-11051, slip op. at 4. The court said that its order was "purposefully crafted to be compensatory and not punitive in nature." Id. at 4.

Chorney's brief here denies the accuracy of the judge's factual conclusions and argues that he is the victim of retaliation for his criticism of improprieties by the judge, trustee and examiner. In support of his denials and blame shifting, however, he points only to previous appellate briefs in this court and elsewhere which recite the same conclusions, and to selected excerpts from the record. We have read the briefs and the record references as liberally as possible in his favor, given his pro se status. However, the material he offers barely provides even a glancing basis for his factual denials and no concrete support for his accusations. The selectivity of his citations, incoherent or indistinct purpose for many record references, and his repeated blurring of temporally distinct events, only serves to confuse and obfuscate the issues.[4]

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[4] We also reviewed the videotape quoted in Chorney's brief, and conditionally accepted by this court on Chorney's motion to supplement the record. We are unable to determine from the scanty information given whether the tape was in evidence below and might

"We must uphold the factual findings of the bankruptcy court, as affirmed by the district court, unless they are clearly erroneous." In re Power Recovery Sys., Inc., 950 F.2d 798 (1st Cir. 1991). Based on a full review of the record before us, including transcripts of the hearings of May 7, 1991, May 22, 1991, September 17, 1991, June 18, 1992, and July 17, 1992, it clearly appears that the bankruptcy court had more than ample evidence to support the contempt order.

We also reject Chorney's procedural challenges to the hearing and order. While Chorney claims now he was never notified of the order, nor given time to prepare a defense, the record shows that he received ample notice and specification of the issues in the court's Show Cause order of July 4, 1991. That order fully complied with Bankruptcy Rule 9020(b). Chorney had more than two months to prepare a defense, was present without objection at the September 17, 1991 hearing, represented by counsel, testified, and was well prepared on all the issues raised.

Equally meritless is Chorney's claim that he was unconstitutionally deprived of a right to a jury trial. Absent an express statute, there is no righ to a jury trial in civil contempt proceedings. Shillitani v. United States, 384 U.S. 364 (1966); cf. United States v. Pina, 844 F.2d 1, 11-12 (1st Cir. 1988) (even in some classes of criminal contempt cases there is no right to a jury). And while it

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thus be a proper part of this record. In any event, the tape does not support Chorney's assignments of error.

may not always be easy to distinguish between criminal and civil contempt, there is no difficulty where, as here, the ultimate object is to compensate the injured party. See generally, In re Power Recovery Sys., Inc., 950 F.2d at 802-3 (defining criminal and civil contempt sanctions); Charles A. Wright et. al., 11 Federal Practice and Procedure § 2960 at nn. 59-60 (1973 & supp. 1992)(same).

At least two of the other issues raised in Chorney's brief merely reiterate arguments he raised in earlier appeals, which were dismissed by this court as improperly taken from interlocutory orders.[5] Chorney's remaining arguments are frivolous.

For the reasons stated, the judgment of the district court is affirmed. Appellee's request for sanctions is denied without prejudice to renewal of the request in the future should events so warrant.

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[5] See supra note 3. Chorney reiterates that he was denied due process when Judge Votolato both recused himself from hearing an Eastland motion to hold Chorney in contempt and ruled that there was no right to a jury trial on the Eastland motion. The Eastland motion was transferred to another judge, and eventually withdrawn. If by reasserting this argument Chorney is suggesting that Judge Votolato should have recused himself from the instant contempt hearing, the argument fails for want of any facts creating a reasonable doubt as to the Judge's impartiality. United States v. Lopez, 944 F.2d 33, 327 (1st Cir. 1991). Chorney also attempts to reargue the contentions underlying his interlocutory appeal from denial of his motion to hold the examiner in contempt.

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Slip Copy, 2003 WL 21435745 (C.A.1. (R.I.))

(Cite as: Slip Copy)

In re Cumberland Inv. Corp.

C.A.1. (R.I.), 2003

Only the Westlaw citation is currently available. This case was not selected for publication in the Federal Reporter. Not for publication in West's Federal Reporter. Please use FIND to look at the applicable circuit court rule before citing this opinion. First Circuit Rule 36(b) (FIND CTA1 Rule 36)

United States Court of Appeals, First Circuit

In re CUMBERLAND INVESTMENT CORPORATION, Debtor

Harold F. Chorney, Appellant

V

REPUBLIC CREDIT CORPORATION I, Appellee

No. 02-1976

June 20, 2003

Appeal from the United State District Court for the District of Rhode Island, Ernest C. Torres, U.S. District Judge.

Harold F. Chorney on brief pro se

Justin T. Shay and Cameron & Mittleman LLP on brief for appellee

Before BOUDIN, Chief Judge, CAMPBELL, Senior Circuit Judge, and LIPEZ, Circuit Judge

PER CURIAM

*1 We have jurisdiction over this appeal because the notice of appeal was filed within thirty days of the district court's order disposing of appellant's motion for "reconsideration," a motion we think properly construed as "a motion to alter or amend the judgment under Rule 59." *See* Fed. R.App. P. 4(a)(4)(A)(iv)

Reviewing the judgment below in light of the record on appeal and the arguments in appellant's brief, we *affirm* the district court's summary dismissal of this appeal from an order of the bankruptcy court for reasons of lack of standing and the barring effect of prior final orders and judgments.

Affirmed

C.A.1 (R.I.), 2003

In re Cumberland Inv. Corp.

Slip Copy, 2003 WL 21435745 (C.A.1(R.I.))

END OF DOCUMENT

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF RHODE ISLAND

In re

CUMBERLAND INVESTMENT CORPORATION

Debtor BK No. 89-11051

Chapter 7

ORDERS: (1) GRANTING MOTION TO STRIKE AND (2) IMPOSING ADDITIONAL SANCTION

Before the Court if the Motion of Harold Chorney "to clarify the class action award from the lawsuit against Christy's Public Auction and require the Chapter 7 Trustee, Jason Monzack, Esq., to provide a complete and detailed accounting of estate assets." Chorney has also served the Trustee with a "Second Request for Admissions." In response, the Trustee has filed two motions to strike – one seeking to strike the motion (Doc. #794), and the other seeking to strike the request for admissions (Doc. #870). Because Chorney lacks standing to bring the instant motions, and because much of the relief he requests has been previously denied here and on appeal all the way to the United States Supreme Court, the Trustee's Motions to strike are GRANTED and Chorney's motion and request for admissions are stricken.

DISCUSSION

Chorney's hyperactivity and ludicrous conduct throughout this case is marked by his incessant acts of bad faith and abuse of the system from the inception of this bankruptcy in 1989. Very early on, it was determined that "Chorney had deliberately and continuously acted in bad faith to obstruct and to hinder the efficient administration of the estate, which action has been very damaging, expense-wise, to the estate and its creditors." In re Cumberland Investment Corp., BK No. 9-11051, slip op. at 1-2 (Bankr. D.R.I. July 3, 1991). As a result, Chorney was prohibited from intervening or "otherwise participat[ing] in proceedings relating to sales or other disposition of estate assets. Id. In addition, in 1992 a civil contempt sanction was imposed in the amount of $200,000 against Chorney on account of his bad faith and abuse of the bankruptcy process. In re Cumberland Investment Corp., BK No. 89-11051, slip op. at 1-2 (1st Cir. 1993), cert denied, 510 U.S. 1200 (1994). This sanction was calculated to reimburse the estate for just a part of the unnecessary expense occasioned by Chorney's aberrant behavior. Id at 4. Obviously undeterred by this sanction, Chorney continues, some twelve years later, to file frivolous pleadings which add expense and delay in the closing of this 1989 case.

By filing the instant motion and requests for admissions, Chorney has directly violated the 1991 injunction. Additionally, in January 2002, Chorney filed a similar request seeking an accounting of assets, which was denied on March 14, 2002, based on lack of standing and the 1991 injunction order. See Doc. #738. That decision was sustained on appeal. See In re Cumberland Inv. Corp., 2003 WL 214357 (1st Cir.), cert denied, 123 S. Ct. 579 (2003). Finally, in an effort to leave no stone unturned, I asked the United States Trustee to review the Trustee's Accounting to date to determine whether any of Chorney's allegations have merit. The United States Trustee responded in late August 2004 stating that she was satisfied with the Trustee's accounting. *See* Doc. #899.

Accordingly, because these issues have been long ago decided against Mr. Chorney, because he lacks standing, and because he is enjoined from participating in this case regarding the disposition of assets, the Trustee's request to strike the instant motion and request for admission are GRANTED.

Also, because the instant filings are frivolous and are hindering the Trustee in performing his duty to conclude this case, it is further ordered that, effective immediately, the Clerk of Court shall decline to accept and filings from Harold Chorney, unless such filing has first been presented to Chambers and is specifically authorized by the court for filing.[1] *See* 11 U.S.C. § 105(a); see also, Mayfield v. Collins, 918 F. 2d 560 (5th Cir. 1990).

Dated at Providence, Rhode Island, this 3rd day of November, 2004.

s/Arthur N. Votolato

U.S. Bankruptcy Judge

Entered on docket: 11/3/04

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[1] I considered imposing additional monetary sanctions, however, the $200,000 contempt sanction remains unpaid and appears to have little deterrent effect on Chorney.

United States Court of Appeals

For the First Circuit

No. 07-8038

IN RE: CUMBERLAND INVESTMENT CORPORATION,

HAROLD F. CHORNEY, Petitioner

Before

Lynch, Chief Judge,

Torruella and Boudin, Circuit Judges.

JUDGMENT

Entered: August 5, 2008

Appellant Harold Chorney has filed a motion in this court seeking "to appeal [from] and/or amend" a bankruptcy court order dated November 3, 2004. He has done so without pursuing an intermediate appeal to the district court or the Bankruptcy Appellate Panel. Even if the instant appeal could somehow be deemed timely, this court lacks jurisdiction, absent certification under 28 U.S.C. § 158 (d) (2), to entertain appeals directly from the bankruptcy court. *See*, e.g., In re Wright, 492 F. 3d 829, 831 (7th Cir. 2007) (accepting certified appeal from bankruptcy court).

The appeal is dismissed for lack of jurisdiction.

By the Court:

s/Richard Cushing Donovan, Clerk.

Cc: Harold Chorney

John Boyajian

John Fitzgerald, III

Matthew McGowan

Jason Monzack

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

IN RE: CUMBERLAND INVESTMENT CORPORATION,

Debtor

HAROLD F. CHORNEY,

Appellant,

v. C.A. No. 08-189ML

JASON D. MONZACK and JOHN F. CULLEN,

Appellees

MEMORANDUM AND ORDER

This matter is before the Court pursuant to Harold F. Chorney's ("Chorney") appeal from orders of the United States Bankruptcy Court for the District of Rhode Island. For the reasons set forth below, Chorney's appeal is DENIED and the order of the bankruptcy court are AFFIRMED.

I. Background

The bankruptcy proceedings of the Cu,berland Investment Corporation ("CIC") began in 1989 when CIC involuntarily petitioned for bankruptcy. An outline of the relevant history follows.

The bankruptcy court issued an injunction against Chorney in July of 1991, citing his obstructive conduct and prohibiting him from intervening or "otherwise participat[ing] in proceedings relating to sales or other disposition of estate assets." In re Cumberland Investment Corp., BK No. 89-11051, slip op. at 1-2 (Bankr. D.R.I. July 3, 1991). The bankruptcy court specifically found that "Chorney ha[d] deliberately and continuously acted in bad faith to obstruct and to hinder the efficient administration of the estate, which action has been very damaging, expense-wise, to the estate and its creditors." Id. The bankruptcy court subsequently imposed a civil contempt sanction against Chorney in the amount of $200,000 due to his bad faith and his abuse of the bankruptcy process. In re Cumberland Investment Corp., BK No. 89-11051, slip op. at 1-2 (Bankr. D.R.I. July 2, 1992), *aff'd sub nom.* Chorney v. Weingarten, 7 F.3d 218 (1st Cir. 1993), *cert denied,* 510 U.S. 1200 (1994). In its order, the bankruptcy court found that Chorney "filed frivolous pleadings, willfully interfered with and obstructed the administration of the case, and generally and in bad faith abused the bankruptcy process, causing the estate and its creditors significant economic harm." Id. According to the Appellees, this sanction has not yet been paid by Chorney.

On November 3, 2004, the bankruptcy court issued one of the orders that Chorney now appels. That order imposes sanctyions on Chorney and strikes Chorney's "Motion to Clarify the Class Action Award [] and Require Chapter 7 Trustee Provide [*sic*] a Complete and Detailed Accounting of the Estate Assets," as well as his "Second Request for Admissions." In re Cumberland Investment Corp., No. 89-11051, 2004 WL 2616318 (Bankr. D.R.I. Nov. 3, 2004). The bankruptcy court found that Chorney lacked standing and that his "hyperactivity and ludicrous conduct throughout this case is marked by his incessant acts of bad faith and abuse of the system from the inception of this bankruptcy in 1989." Id., at *1. The bankruptcy court held that Chorney had directly violated the 1991 injunction by filing the motions. Id. The First Circuit has since dismissed Chorney's appeal of that order for lack of jurisdiction, because he did not pursue a timely intermediate appeal to this Court or the Bankruptcy Appellate Panel. In re Cumberland Investment Corp., No.07-8038 (1st Cir. Aug. 5, 2008). Chorney concedes that he failed to timely appeal the order but contends that the bankruptcy court violated Fe. R. Civ. P. 60(b)(6) by precluding his access to the courts. Brief of Appellant, In re Cumberland Investment Corp., at 11-12 (No. 08-189).

Between July and October of 2007, both Edwards, Angell, Palmer and Dodge, LLP ("Edwards Angell") and Trustee Cullen filed applications for final compensation, which prompted Chorney to file a "Motion to Clarify First and Final Application for Fees and Expenses of Edwards Angell Palmer & Dodge LLP" on February 14, 2008, and an "Offer of Proof Concerning Standing" on April 25, 2008.

In May of 2008, the bankruptcy court issues an order approving the first and final fee application of Edwards Angell, denying Chorney's "Motion to Clarify First and Final Application for Fees and Expenses" of Edwards Angell, and holding that Chorney lacks standing to participate regarding claims of professional expenses against the bankruptcy estate. Chorney, filing pro se, subsequently filed this "Motion and Memorandum to

Appeal and/or Amend Bankruptcy Orders Dated November 3, 2004 and May 8, 2008," which this Court treats as an appeal.

II. Standard of Review

An aggrieved party may appeal to this Court "from the final judgments, orders, and decrees" of a bankruptcy court. 28 U.S.C. § 158(a)(1). In a bankruptcy appeal, this Court accepts the findings of fact by a bankruptcy court unless they are clearly erroneous. LaRoche v. Amoskeag Bank (In re LaRoche), 969 F.2d 1299, 1301 (1st Cir. 1992). A bankruptcy court's decision "may only be rejected if this Court has a 'definite and firm conviction that a mistake has been committed." Forbes v. Four Queen Enterprises, Inc., 210 B.R. 905, 909 (D.R.I. 1007) (quoting United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948)). Rulings of law, however, are reviewed de novo. LaRoche, 969 F.2d at 1301 (citing Bartmann v. Maverick Tube Corp., 853 F.2d 1540, 1543 (10th Cir. 1988)).

III. Analysis

A. Standing

A primary issue in the case at hand is whether Chorney has standing to address the application for professional fees and expenses of Edwards Angell against the bankruptcy estate. The Bankruptcy Appellate Panel of the First Circuit has addressed bankruptcy standing standards, holding that it is:

> Narrower than Article III standing. Only a person aggrieved has standing to challenge a bankruptcy

> court order; the challenged order must directly and adversely affect the appellant's pecuniary interests. A person aggrieved is one whose property is diminished, burdens are increased, or rights are impaired by order on appeal.

Great Road Ser. Ctr., Inc. v. Golden (In re Great Road Serv. Ctr., Inc.). 304 B.R. 547, 550 (B.A.P. 1st Cir. 2004)(internal citations and quotations omitted). An appellant's standing is a threshold jurisdictional issue. In re Shkolnikov, 337 B.R. 1, 4 (B.A.P. 1st Cir. 2006), appeal dismissed, 470 F.3d 22 (1st Cir. 2006). Whether an individual is aggrieved for purposes of appeal is "a factual determination generally made in the first instance by the bankruptcy court." Id. (citing Spenlinhauer v. O'Donnell (In re Spenlinhauer), 261 F.3d 113, 118 (1st Cir. 2001)). This Court, then, reviews that factual determination for clear error. *See* LaRoche, 969 F.2d at 1301.

Chorney argues that he is an aggrieved party with some personal, non-corporate interest in some of the property seized. In his "Statement of the Issues," Chorney also contends that the $200,000 sanction imposed by the bankruptcy court provides him with standing. He further argues that time records of the billing of Cullen and the billing of Mr. Edward Bertozzi of Edwards Angell from August 31, 1991 to December 22, 1993 are inconsistent with each other and with other billings. Chorney argues that this inconsistency provides the basis of his pecuniary interest, giving him standing to challenge the bankruptcy court's orders. The bankruptcy court did not rule on Trustee Cullen's application for expenses and fees in May of 2008 and thus Cullen's application is not a part of this appeal.

The Appellees argue that the determination on the fee application of Edwards Angell does not have any affect on Chorney, because he does not stand to receive any funds from the bankruptcy estate. Chorney did not file a proof of claim in this bankruptcy proceeding and thus lacks standing as a creditor. The Appellees contend that Chorney has only recently begun to argue that he has some personal interest in the estate, though the bankruptcy estate has been pending since 1989. Appellees further contend that Chorney's argument that his court-ordered sanctions constitute a pecuniary interest in the proceedings should be "dismissed out of hand." Brief of Appelle Monzack, In re Cumberland Investment Corp., at 6 (No. 08-189).

In its May 7, 2008 bench decision, the bankruptcy court adopted the Appellees' arguments against Chorney's standing in their entirety. Transcipt of Record at 26:20 – 27:2, In re Cumberland Investnmebt Corp., BK No. 89-11051 (May 7, 2008). This decision was incorporated by reference in the bankruptcy court's May 8, 2008 order, denying Chorney's Motion to Clarify. In re: Cumberland Investment Corp., BK No. 89-11051 (May 8, 2008).

This Court agrees with the bankruptcy court's finding that Chorney is not a person aggrieved for purposes of this appeal. Therefore this Court finds that the bankruptcy court's determination that Appellant Chorney lacks standing does not constitute clear error.

Accordingly, the Appellant's appeal of the order of May 8, 2008, and the bench order of May 7, 2008, is denied.

B. The November 3, 2004 Bankruptcy Court Order

Chorney contends that the order of November 3, 2004 precludes his participation in the bankruptcy proceedings, in violation of his constitutional rights. A notice of appeal is timely if filed within ten days after the entry of the judgment. Fed. R. Bankr. P. 8002(a). Chorney failed to timely appeal this order. Instead, on November 2, 2007, Chorney filed a "Motion to Appeal and/or Amend Bankruptcy Order, Dated November 3, 2004" with the First Circuit. The First Circuit determined that is lacked jurisdiction over the appeal, as Chorney did not timely appeal the order to this Court or to the Bankruptcy Appellate Panel and failed to obtain certification under 28 U.S.C. § 158(d)(2). In re Cumberland Investment Corp., No. 07-8038 (Aug. 5, 2008).

Chorney has attempted to appeal the November 3, 2004 bankruptcy order with this appeal, filed initially with this Court on May 13, 2008. The filing of this appeal is three and a half years after the original order was entered. As a result, the appeal is untimely. The Appellant contends that "untimely request for relief is justified and in the public interest." This Court finds no legitimate support for such an untimely request.

Chorney further contends that the bankruptcy court's orders and judgments have effectively precluded him from accessing the courts, violating Fed. R. Civ. P.

60(b)(6), which provides relief from a final judgment or order for "any other reason that justifies relief." Rule 60 offers "the only avenue of relief from final civil judgments other than by appeal or independent action." Lubben v. Selective Srv. Sys. Local Bd. No. 27, 453 F.2d 645, 648 (1st. Cir. 1972). In particular, a party invoking Rule 60(b)(6) must assert a reason "other than those enumerated in 60(b)(1)-(5), and must be sufficient to justify the relief sought." Id., at 651. Furthermore, "the residual clause, like Rule 60(b) generally, is not a substitute for an appeal, and in all but exceptional circumstances, the failure to prosecute an appeal will bar relief under that clause." Id. (footnote omitted). Having determined that Chorney's appeal is untimely, this Court further finds that Chorney has failed to advance any legitimate reasons for relief under Rule 60

The Appellant's appeal of the November 3, 2004 bankruptcy order is accordingly denied.

C. Arguments not part of this appeal

Chorney raises a number of other issues on appeal, including an alleged failure to disclose or produce materials in discovery which he argues constitutes a violation of Fed. R. Civ. P. 60(b)(3). These issues have long been settled. For example, Chorney's request for an accounting of assets was denied in March of 2002 on the basis of lack of standing and the barring effect of prior final orders, and this determination was sustained on appeal and the United States Supreme Court denied certiorari. *See* In re Cumberland Investment Corp., No. 02-1976, 2003 WL 21435745 (1st Cir. June 20, 2003), cert denied, 540 U.S. 1022 (2003). In any case, the relevant discovery was not at issue in May of 2008 and is not pertinent to this appeal.

IV. Conclusion

For the foregoing reasons, this Court concludes that the Appellant lacks standing and prior final orders and judgment bar his claims. Accordingly, Chorney's appeal is DENIED and the orders of the bankruptcy court are AFFIRMED.

SO ORDERED.

s/Mary M. Lisi

Chief United States District Judge

December 18, 2008

UNITED STATES COURT BANKRUPTCY COURT

FOR THE DISTRICT OF RHODE ISLAND

IN RE: CUMBERLAND INVESTMENT CORPORATION

CA. NO. 89-11051

MEMORANDUM IN SUPPORT OF MOTION IN OBJECTION TO THE FINAL REPORT AND ACCOUNT BEFORE DISTRIBUTION, REQUEST FOR COMPENSATION AND REPORT ON CLAIMS/PROPOSED DISTRIBUTION [DOCKET 1043]

Now comes Harold F. Chorney, pro se, a Petitioner with property interests and an interested party in the above captioned matter and in accordance with Rule 5009, Harold F. Chorney, objects to the report and states for cause that the estate has not been fully administered.

In light of missing and unaccounted for assets of the estate and those belonging to Petitioner personally, Petitioner requests the Court require the Chapter 11 Trustee, Jason D. Monzack, to provide discovery to Petitioner, including but not limited to an accounting of the Gross Receipts and Disbursements prior to the Conversion Date of 12/22/93.

A. BACKGROUND:

1. On August 15, 1990 John F. Cullen, John Doherty, Executive Vice President of Eastland Bank, and Leon Blais from the firm of L.C.F. entered the premises of Cumberland Investment. Upon

information and belief Mr. Blais was in the employ of both Mr. Cullen and Eastland Bank and was involved in the removal of documents including the yellow inventory notebooks from the premises of Cumberland Investment Corporation at 141 Main Street in Woonsocket Rhode Island.

2. On August 16, 1990 TRUSTEE'S EMERGENCY MOTION FOR A HEARING TO PHYSICALLY REMOVE THE DEBTOR FROM THE PREMISES. [Bnk docket #137.]

3. On or about August 17, 1990 John F. Cullen was appointed as Chapter 11 Trustee in the Cumberland Investment Corporation case.

4. Docket entry 8/22/90 shows that a Hearing Held Re: [137-1] for hrg to physically remove debtor by John F. Cullen. Hearing held on 8/17/90.

5. On August 17, 1990 and August 23, 1990 Mr. Cullen removed assets and documents from the premises at 141 Main Street and 325 Main Street, Woonsocket, Rhode Island without any court order and conducted a *warrantless* search and seizure.

6. On or about December 12, 1990 John F. Cullen, Eastland Bank, Gerald Aubin and Harold F. Chorney entered into an agreement for Eastland Bank to advance money to the Trustee in accordance with 11 U.S.C. § 364 to be paid with the proceeds of the sale of assets of Cumberland Investment Corporation.

7. One June 10, 1994 and September 13, 1994 Harold Chorney supplied Mr. Monzack with a list of assets which were missing or unaccounted for.

8. On December 28, 1994 Mr. mozack met with Traian Nacu, Phillip Dunleavy and Harold Chorney. At this meeting Mr. Monzack admitted that over $300,000 in assets belonging to the estate of Cumberland Investment Corporation, seized by Mr. Cullen were indeed missing.

9. On May 7, 2008 [a hearing] was hold. Not heard at this hearing was the application for Mr. Cullen's fee and the Trustee's Final Report..

B. DISCUSSION:

1. The Final Report, dated March 27, 2009, shows Gross Receipts of $619,284.24 and Disbursements of $377,057.18

2. The Gross Receipts and Disbursements in the Final Report, dated March 27, 2009, does not accurately reflect the Gross Receipts or the Disbursements made with estate assets prior to the conversion date of 12/22/93.

3. The Final Report does not show the Gross Receipts and Disbursement nor do they show the aggregate of the Receipts and the Disbursements of the estate.

C. ARGUMENT

In light of the following:

1. The Trustee shall be accountable for all property received. Title 11 §704(2).

2. Creditors and other interested parties are entitled to know the value of the assets sold and the total disbursements which were made with estate assets.

3. The Affidavit of Donald C. McQueen, Vice President of Eastland Bank, dated November 16, 1993 states in part that,

> "During my stay at Eastland Bank, the bank, at the request of the Trustee, provided financing to enable the Trustee to collect and administer the assets of the bankruptcy estate. To the best of my recollection over $200,000 was used by the Trustee to collect, secure, store, and safeguard the coins and other tangible assets of Cumberland. Part of that expenditure by the bank was to pay the fees of the attorney for the Trustee."

4. The case is not fully administered since the fee application of Mr. Cullen has not been ruled upon; assets are missing and unaccounted for; and there are questions concerning the fees awarded to Trustees, Examiners and Professionals.

5. Rule 2012(b)(2) requires the successor trustee to prepare, file and transmit to the United States trustee an accounting of the prior administration of the estate.

6. Rule 2013(b) requires the clerk to prepare a summary of the public record of fees awarded to Trustees, Examiners and Professionals. A copy of the summary is submitted to the United States Trustee.

On April 14, 2009 a letter was sent by Petitioner to the U.S. Trustee's office requesting a copy of the responses sent to the U.S. Trustee's Office by both the court and Mr. Monzack concerning paragraphs #5 and #6 above.

Respectfully Submitted,
s/Harold F. Chorney
16 Spring Drive
Johnston, R.I. 02903
(401) 934-0536

CERTIFICATION

I hereby certify that on this ___ day of April 2009, I sent a copy of the above by first class mail to the following:

Edward J. Bertozzi, Jr.
Edwards Angell Palmer & Dodge LLP
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Providence, R.I. 02903

Jason D. Mozack
Kirshenbaum & Kirshenbaum
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Cranston, R.I. 02910

Leonard DePasquale, AUST
Office of the U.S. Trustee
10 Dorrance Street
Providence, R.I. 02903

United State Trustee
Thomas P. O'Neill, Jr.
Federal Office Building
10 Causeway Street, Room 472
Boston, MA 02222-1043

John F. Cullen
Law Office of John F. Cullen, PC
17 Accord Park Drive, Ste 103
Norwell, MA 02061

s/HAROLD F. CHORNEY

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND CA. No. 09-1117

INVESTMENT CORPORATION

ISSUE OF STANDING IN AN APPEAL OF THE DENIAL OF MOTION TO CLARIFY FIRST AND FINAL FEE APPLICATION OF EDWARDS ANGELL PALMER & DODGE LLP

A. JURISDICTION

The Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the District Courts of the United States.....28 U.S.C.A. §1291.

B. STATEMENT OF THE ISSUES

In light of the fact that Appellant's standing is a threshold jurisdictional issue, In Re: Shkolnikov, 337 B.R. 1, 4 (B.A.P. 1st Cir. 2006.) and that "The party invoking federal jurisdiction bears the burden of proof to demonstrate standing." Lujan v. Defenders of Wildlife, 504 U.S. 555 at 561, the Statement of Issues argued in this brief are related to the issue of standing. A History of Issues presented to Appeals Courts concerning the Motion to Clarify is contained in the following section.

Appellant incorporates those issues into this instant brief.

1. Whether the bankruptcy court's determination, adopted in full by the District Court, from the finding of fact that Appellant is not an aggrieved individual and therefore lacks standing, is "clear error?"
2. Whether the bankruptcy court abused its discretion by granting the fee application of Edwards Angell Palmer & Dodge and Edward Bertozzi subsequent to Appellant showing discrepancies with the application while denying Appellant relevant discovery pertinent to this appeal?
3. Whether the rulings of law are correct concerning standing or should be reviewed de novo?

HISTORY OF ISSUES PRESENTED TO THE APPEALS COURTS CONCERNING TH E DENIAL OF THE MOTION TO CLARIFY

I. On November 1, 2007, a Petition to the First Circuit was made by Harold F. Chorney, claiming that he is being denied evidence necessary to establish facts in dispute. The issues presented were:

   A. Whether the sanctions of the November 3, 2004 order as applied fall within the purview of F.R.C.P. Rule 60(b)(6) in that the imposition of sanctions preclude Petitioner of access to the courts.

   B. Whether the history of failure by officers of the court to disclose or produce materials in civil and related criminal discovery so that Petitioner can present his case, can constitute misconduct within the purview of Rule 60(b)(3). See Anderson v. Cryovac, Inc., 862 F2d 910, 923. (1st Cir. 1988.)

C. Whether Judge Votolato has engaged in conduct prejudicial to the effective and expeditious administration of the case thus committing wrongs against the institutions set up to protect and safeguard the public.

D. Whether Petitioner can obtain a fair hearing and be granted due process and equal protection under the law with Judge Votolato presiding over this case.

11. On May 23, 2008, as a result of continuous denial of due process in the bankruptcy proceedings, Appellant presented twelve (12) issues to the Bankruptcy Court to be presented to the District Court in Ca. No. 08-0189ML, in STATEMENT OF THE ISSUES IN AN APPEAL OF THE DENIAL OF MOTION TO CLARIFY FIRST AND FINALFEE APPLICATION OF EDWARDS ANGELL PALMER & DODGE LLP, AND DENIAL OF STANDING OF PETITIONER TO BE HEARD. Appellant stated that the twelve issues raised in the District Court for the District of Rhode Island are manifestations of the four issues raised in the Petition to the First Circuit Court of Appeals in Ca. No. 07-8038.

The twelve issues presented was paragraphs (a.) to (l.) below:

a. The Bankruptcy Court has denied due process to the Petitioner by allowing the unfair taking of his personal property in violation of the Fifth Amendment to the Constitution of the United States of America and has implemented unfair procedures and decisions preventing Petitioner from discovering what happened to his personal property.

b. The Bankruptcy Court erred in not granting Petitioner, an aggrieved party with a pecuniary interest, his rightful standing to participate and question "professionals" on this case concerning an accounting of the assets of this case and the billings submitted by said "professionals". The due process clause of the Fifth Amendment to the Constitution of the United States of America, guarantees Petitioner the right to be heard in these circumstances.

c. The Court erred in not granting Petitioner, ordered by the Bankruptcy Court to pay $200,000.00 in financial compensation, with interest totaling in excess of $500,000.00, to have standing as an aggrieved party with a pecuniary interest, so that Petitioner could question the billings of those who claimed their services have been made necessary by the actions of Petitioner, especially in light of the fact that these billings contain numerous and serious discrepancies.

d. Petitioner was denied due process when a full and fair hearing was denied to Petitioner after he was presented with the "position" papers of the other parties shortly before the hearing and the docket was manipulated to favor the presentation of those positions, depriving Petitioner the opportunity to respond adequately to the arguments presented.

e. Petitioner was denied due process when a full and fair hearing was denied to him after the docket was manipulated in a manner designed to deprive Petitioner the opportunity to present his case and to examine Attorney Bertozzi and Attorney Cullen concerning some 20 discrepancies in their billings.

f. Petitioner was denied due process when full and fair hearings were denied and discovery concerning Petitioner's Motion to Clarify, prior to the March 27, 2008 and May 7, 2008 hearings, was not allowed by the court.

g. Petitioner was denied a full and fair hearing when he could not ask through discovery or at the hearings on March 27, 2008 and May 7, 2008, whether payments were made to Attorney Bertozzi or Attorney Cullen as stated in the Court Order, dated December 12, 1990 [206-1].

h. Petitioner was denied a full and fair hearing by the unexplained absence of Attorney Cullen at the hearing on May 7, 2008. Attorney Cullen's absence deprived both Petitioner and the Bankruptcy Court of the ability to compare his billings to the billings of Attorney Bertozzi to possibly uncover evidence as to the location of Petitioner's personal assets.

i. Petitioner was denied due process when a request to the Court for a "comfort letter" concerning Attorney Bertozzi and Edwards Angell Palmer & Dodge LLP being responsible for their actions despite not being paid for the time billed in the so called "Missing Bertozzi Billing", was denied to Petitioner.

j. Petitioner was denied due process by failure of the court to administer this case by enforcing its fiduciary responsibility to have the Trustee provide an accounting of the assets of the case as required by statute.

k. Petitioner is being denied fair treatment and is being denied equal protection under the law in accord with the guarantees of the Fourteenth Amendment to the Constitution of the United States of America.

l. Petitioner avers that the repeated references to prior orders and sanctions of Petitioner by Judge Votolato and Judge Votolato's conduct and continued participation in Petitioner's hearing on the Motion to Clarify the billings deprived Petitioner of due process and the right to a full and fair hearing on his motion.

III. Subsequently, a July 21, 2008, Order of the District Court in Ca. No. 08-189ML stated that "in the interest of uniformity and orderly presentation of facts and legal issues........appeal to this Court shall be taken with the same concern as though it were to the First Circuit Court of Appeals. On August 19, 2008, Appellant adopted the same four issues A-D as listed in section I. above, to the First Circuit Court of Appeals on November 1, 2007 for the Appeal in Ca. No 08-189ML.

C. BACKGROUND:

There are lengthy motions and appeals with voluminous exhibits filed by Appellant related to both the criminal case Cr. No. 92-099P and civil cases related to 89-11051ANV. In case number 94-1343, Appellant compiled a list of constitutional violations committed against him. Although his attorney Scott A. Lutes, chose not to argue constitutional violation issues at trial, Mr. Lutes, at Appellant's insistence presented these arguments to the Court of Appeals for the First Circuit on appeal from a judgment of the United States District Court for the District of Rhode Island on December 12, 1994. Some constitutional issues (See E503-E561.) previously raised by Appellant, are relevant to the standing issues argued in this instant brief.

Subsequently there was a long series of events leading up to the Motion to Clarify in a bankruptcy case that is over 19 years old. Critical events are listed in eight (8) Appendices, containing 693 pages of exhibits, including three transcripts, related to this motion and have been presented to this court in the Designation of the Record, with exception of Appendices VII and VIII.

Appellant in the interest of uniformity and orderly presentation has identified Exhibits heretofore sent to the Circuit Court in Ca. No.07-8038 and District Court in Ca. No. 08-0189ML. Each page from the (8) Appendices is listed with an "E" page number and will be referred to in this brief utilizing the "E" page numbers.

A more complete Chronology of events is contained in BRIEF OF APPELLANT, Ca. No. 08-189ML, dated August 19, 2008 and SUPPLEMENTAL BRIEF OF APPELLANT, dated December 27, 2008. However many other important aspects of this case are contained in Appellant Briefs and Exhibits presented prior to 2007.

A brief summary of the case: 1. Appellant was the principal in Cumberland Investment Corporation (C.I.C.), which was petitioned into bankruptcy by Eastland Bank. 2. Appellant was accused of improprieties, the basis of a criminal referral, by a court appointed Examiner, who had "inventoried" the assets of C.I.C. 3. Appellant was replaced by a Chapter 11 Trustee, who hired the Examiner, contrary to statute 11 U.S.C. §327 (f). Both the Examiner and Trustee Cullen were advanced money by Eastland Bank and both were represented by Mr. Bertozzi. 4. The Trustee, Mr. Cullen, removed documents, corporate and non-corporate assets from the premises of C.I.C. at 141 Main Street Woonsocket, R.I. on or about August 17, 1990. 5. Subsequently, assets dissipated and the inventory documents, "yellow inventory notebooks" disappeared. 6. Every attempt of

Appellant to obtain a copy of the "yellow inventory notebooks" was unsuccessful. 7. Every attempt to obtain an accounting of the assets removed by Appellee Cullen through a *warrantless* search on August 17, 1990 from the premises, has been met with opposition by officers of the court. 8. Recently produced billings by Mr. Bertozzi and Mr. Cullen show discrepancies with each other and bring to light events which may shed light on missing and unaccounted for assets, both personal and corporate. 9. Appellant has attempted to obtain clarification of these billings and requested discovery. 10. Appellees claim that Appellant has no standing to bring motions, is abusing the process and obstructing the administration of this 19 year old case. 11. Appellant claims that he has standing. 12. Appellant claims he is championing his own rights and is an "aggrieved" party who has sustained injuries. 13. Appellant also claims he has property interests and that his personal assets were removed with corporate assets by the Trustee on August 17, 1990. 14. Appellant claims that he has been denied due process; that he cannot obtain an accounting; and in the process has been denied evidence necessary to establish facts in dispute.

D. FIRST ISSUE

Whether the bankruptcy court's determination, adopted in full by the District Court, from the finding of fact that Appellant is not an aggrieved individual and therefore lacks standing is "clear error?"

I. DISCUSSION OF FIRST ISSUE:

Hearings were held concerning the billings of Mr. Bertozzi. For all intents and purposes, the hearing held on March 27, 2008 (See E387-399.) and the hearing held on May 7, 2008 (See E473-502.) were hearings in name only. They were not full hearings where Appellant could gather evidence necessary to establish facts in dispute concerning the assets removed on August 17, 1990. Appellant was not allowed to present his case by calling and questioning witnesses (See Par. B on E543); Appellant was denied the opportunity to obtain discovery from Appellees.

Appellees argue that Appellant lacked standing to bring this Motion for Clarification, contending that Appellant has only recently begun to argue that he has some personal interest in the estate, though the bankruptcy estate has been pending since 1989.

The May 7, 2008 and May 8, 2008 decisions of the bankruptcy court (despite the arguments presented in the APRIL 18, 2008, OFFER OF PROOF CONCERNING STANDING--See E448-458) fully adopted the positions of the Appellees. In effect, the ruling of Judge Votolato was like a "Summary Judgment" basically denying that there are any issues of disputed facts concerning standing such as personal assets of Appellant being seized with corporate assets on August 17, 1990 or that the testimony or records of Mr. Bertozzi would contain evidence of these personal assets of Appellant or that the "missing" transcripts and videotapes taken by Trustee Cullen would contain evidence concerning personal assets of Appellant.

(NOTE: Neither Mr. Cullen not Mr. Bertozzi responded to the May 17, 1995, (See E148-E150.) request for documents related to a chain of custody of the assets removed on August 17, 1990, despite the fact that the record shows that inventories, transcripts and videos were in their custody and control.)

The District Court, as they have done in past appeals regarding Appellant to that court, accepted the "Summary Judgment" of the Bankruptcy Court and adopted the arguments of the Appellees and found that the Bankruptcy Court's determination that Appellant Chorney lacks standing does not constitute clear error .

II. ARGUMENT CONCERNING FACTUAL DETERMINATIONS

Whether an individual is aggrieved for purposes of appeal is "a factual determination generally made in the first instance by the bankruptcy court." In re: Spenlinhauer, 261 F. 3d. 113, 118 (1st Cir. 2001).

Appellant questions and disputes the facts relied upon by the bankruptcy court for the May 7, 2008 and May 8, 2008 decisions and subsequently by the District Court.

Appellant argues that he was denied "due process" and that there is a history of failure of officers of the court to disclose or produce materials so that Appellant can present his case. In effect, the decision of Judge Votolato was akin to a Summary Judgment. Since the issue in question is viewed as a Summary Judgment, Appellant set forth by Affidavit (See E460-468.) evidence and specific facts which for purposes of the summary judgment be taken as true. (See Fed R. Civ. P. 56(e).)

IN RE: AFFIDAVIT OF APPELLANT, EVIDENCE BEFORE ALL COURTS

1. Paragraph 11, E461. Transcript of the removal of the assets on August 17, 1990 on E336 shows that Mr. Weingarten was aware that there were non-corporate assets.

2. Paragraph 14, E462. Transcript of the removal of the assets on August 17, 1990 show that items like the golden frogs were removed on August 17, 1990.

3. Paragraph 15, E462. All assets of Cumberland Investment Corporation were listed in "yellow inventory notebooks."

4. Paragraph 16, E462. The "yellow inventory notebooks" were removed from the premises by Trustee Cullen on August 15, 1990.

5. Paragraph 23, E463. Appellant supplied Mr. Monzack with a written list of assets seized that were missing.

6. Paragraph 25, E463. Appellant supplied Mr. Monzack with transcript of August 17, 1990, and a second request for what happened to the golden frogs and other assets.

7. Paragraph 26, E463-4. As of December 28, 1994, the yellow inventory notebooks were missing; Mr. Monzack was attempting to obtain the records,

inventories, documents, videos and still photographs of the seized assets as they were being removed from the building; and some $300,000 to $400,000 in assets seized by John F. Cullen, Esq., was missing.

8. Paragraph 27, E464. Requests from Appellant's criminal attorney, Scott Lutes, Esq. concerning inventories and detailed disposition of assets were not responded to by Jason D. Monzack, Chapter 7, Trustee.

9. Paragraph 29, E464. Mr. Cullen, Mr. Bertozzi, Mr. Weingarten and others did not comply with the request from Mr. Monzack on May 17, 1995 (See E148-E150.) seeking inventories and documents to establish a chain of custody of the assets removed from the premises on August 17, 1990.

10. Paragraph 32, E465. To date Appellant has not been able to obtain a copy of the "yellow inventory notebooks."

11. Paragraph 35, E465. On March 27, 2008, at a bankruptcy court hearing, Mr. Monzack denies knowledge of the August 17, 1990 transcript and the existence of the golden frogs (TR 3/27/08, page 15, E-365.) The documents in paragraph 23. (E120-E125) and paragraph 25. (E307-E349; E342) above belie Mr. Monzacks March 27, 2008 statements of denial of any knowledge concerning the golden frogs and the August 17, 1990 Allied Court Transcript.

12. Paragraph 36, E465. When Mr. Cullen is asked by the court "to respond to this allegation about the specific items that Mr. Chorney just referenced to establish his alleged interest in property and, therefore, his standing in the case," Mr. Cullen denies any knowledge of the golden frogs. (TR 3/27/08, page 16-18, E366-E368.)

13. Paragraph 37, E465. Appellant, upon information and belief, believes that he has been denied due process by not having the opportunity through the bankruptcy court to question witnesses such as Mr. Cullen, Mr. Monzack, Mr. Weingarten or Mr. Bertozzi concerning the seizure and possible sale of Appellant's personal property and/or why there is no record of these assets and other assets listed on page E-121 being sold.

EVIDENCE BEFORE THE DISTRICT COURT NOT BEFORE THE BANKRUPTCY COURT

1. In response to the Brief of Appellee in Ca. No. 08-0189ML, (Docket # 16), entered August 20, 2008, Appellant on August 25, 2008 (Docket #17.) submitted APPELLANT'S REPLY TO AND CITATION OF CERTAIN ERRONEOUS AND EGREGIOUS ALLEGATIONS CONTAINED IN THE BRIEF OF JASON MONZACK.

Mr. Monzack states that, "Eighteen and a half (18 ½) years after his case was filed Chorney now apparently asserts that he has a personal interest in "some of the property seized." (Docket #16.)

> "In response Appellant demonstrates to the court that he has always claimed that "personal assets" were removed by the Chapter 11 Trustee, when corporate assets were removed. See pages E401-2 in Appendix IV, letters from David N. Cicilline, Esq. to Mr. Cullen concerning the fact that certain personal property of Mr. Chorney was removed by the Trustee."

No one is contesting the fact that Mr. Cicilline sent letters to Trustee Cullen (See paragraph 17, page E462.) on August 24, 1990 and September 13, 1990, concerning personal assets seized. (See E401-402.)

The Cicilline letters alone should have negated the Appellees argument that Appellant has just recently begun to make the claim that he had personal assets that were missing.

Appellant avers that based upon the untruthful testimony of Mr. Monzack and Mr. Cullen described in paragraphs 35 and 36 of Appellant's Affidavit, (See E465; E385; E366-E368.) and the Cicilline letters described in paragraph 17 of Appellant's Affidavit (See E462, E401-402.) unequivocally show that Appellant has raised the issue of personal assets seized by the trustee, and therefore the existence of clear error exists concerning the facts.

EVIDENCE BEFORE THE CIRCUIT COURT FROM AFFIDAVIT OF APPELLANT RELATED TO PERSONAL ASSETS NOT PRESENTED TO THE DISTRICT COURT PRIOR TO THE MOTION TO

MODIFY THE RECORD, DATED FEBRURARY 9, 2009 (DISTRICT COURT DOCKET #28.)

1. Paragraph 4 on E460, stating that on August 16, 1990, "an order that the Debtor and his personal property be physically removed from the Premises located at 141 Main Street, Woonsocket, R.I." (See E468-470, bankruptcy court docket #137.)

Docket entry 8/22/90 shows that a Hearing Held Re: [137-1] Motion for hrg to physically remove debtor by John F. Cullen. Hearing held on 8/17/90.

Appellant's notes indicate that when Attorney Oster called Mr. Cullen to the stand to testify concerning the events of August 15, 1990 when Mr. Dougherty and Mr. Blais, accompanying Mr. Cullen took the yellow inventory notebooks and other items and then Mr. Cullen threatened Appellant that he had to move otherwise he and his personal items would be removed, the judge continued the hearing. (Note: The antics of Mr. Cullen on August 15, 1990, were done prior to him being officially made Trustee.)

2. Although E468-470 was not part of the April 18, 2008 Offer of Proof to the bankruptcy court, the bankruptcy judge and officers of the bankruptcy court were aware of the Emergency Motion to remove Debtor and his property and having toured the premises (See paragraph 3 on E460) were aware that Appellant had personal assets on the premises the date that the Trustee removed the assets.

3. Paragraph 6 on E460. When Appellant left Woonsocket on August 17th 1990 subsequent to a bankruptcy court hearing, the vaults at the premises, containing personal and corporate assets were sealed. When Appellant returned to Woonsocket on or about August 18th 1990, the vaults containing personal and corporate assets were open and all the contents were removed.

4. Paragraph 9 on E461. Corporate and non-corporate assets had been segregated in some instances in the vaults at the premises by an employee of the Examiner, Michael Weingarten. Michael Weingarten was represented by Edward Bertozzi and should have had knowledge of this segregation of assets. (Paragraph 10 on E461.)

5. Paragraph 12 on E461. Judge Votolato, Mr. Cullen and other officers of the court, like Mr. Bertozzi, upon information and belief, were aware that both corporate and non corporate assets were at the premises in Woonsocket. Documents, such as the document on page E472 sent to Appellant's attorney John Boyajian, from Mr. Bertozzi, lead Appellant to believe that Mr. Bertozzi was well aware of the fact that assets belonging to Appellant and others were in the vaults at 141 Main Street, Woonsocket, R.I. on and before August 17, 1990.

6. Paragraph 17 on E462. The letters from attorney Cicilline to Mr. Cullen referred to personal assets seized. Not said in paragraph 17, but believed to be true is that Mr. Bertozzi was in contact with Mr.

Cullen prior to the removal of the assets on August 17, 1990; that Mr. Bertozzi actually represented Mr. Cullen prior to August 23, 1990; that the billing of Mr. Cullen on 8/16/90 (See E218.) "Telephone conference with counsel" refers to Mr. Bertozzi and fourthly that Mr. Bertozzi was well aware of the letters from Mr. Cicilline.

7. Paragraph 20 on E462. There were requests for documents concerning corporate and personal assets from attorney Oster. Not said in paragraph 20, but believed to be true is that Mr. Bertozzi was well aware of the requests from Mr. Oster concerning the golden frogs and other assets, removed by Mr. Weingarten under the direction of Mr. Cullen.

8. Paragraph 23 on E463. Appellant made no distinction between corporate and personal assets seized in his lists to Mr. Monzack on June 10, 1994 and September 13, 1994 (See E120-E125.), since Appellant could not recall from memory which assets, stored in vaults at 141 Main Street Woonsocket, R.I., were listed in the "yellow inventory notebooks."

9. Paragraph 41 on E466. Appellant has argued that personal and corporate assets are missing. Not specifically stated was that Appellant has personal knowledge that he has had conversations with Mr. Baverstam concerning the contents of the vaults at 141 Main Street Woonsocket, R.I. containing assets which were not corporate assets. Said assets

included "redemption client coins", segregated coin and stamp lots being appraised belonging to the "McCrystals" and others as well as antiquities and different items belonging to Appellant.

BACK IN 1994 APPELLANT MAKES CLAIMS OF REMOVAL OF PERSONAL PROPERTY BY THE TRUSTEE ON AUGUST 17, 1990

A list of constitutional violations was part of an Appeal to the First Circuit Court of Appeals, Ca. No. 94-1343, on December 12, 1994. Attorney Lutes, at Appellant's insistence presented Appellant's arguments to the court, although Attorney Lutes chose to argue other strategies in Appellant's Brief. (Trustee Monzack stated that assets and records of the estate were missing on December 28, 1994. This was only a few weeks later than Appellant's Brief.) (See E127.) Appellant stated as part of his Fourth Amendment Arguments over fourteen years ago on December 12, 1994, referring to the August 17, 1990 Search and Seizure, on page E-548 that his personal property had been removed:

"Defendant Chorney alleges that the government agents in this case knowingly removed personal property and Wescap property. That they knowingly broke into the office of FPC and removed documents from the Wescap office and that these same records were then turned over to the U.S. Attorney"

NOTE: The clearly marked offices of Financial Privacy Consultants and Wescap Enterprises Limited, the parent corporation of Cumberland Investment Corporation were both located at the premises at 141 Main Street, Woonsocket, Rhode Island.

III.CONCLUSION:

Based upon the untruthful testimony of Mr. Monzack and Mr. Cullen described in paragraphs 35 and 36 of Appellant's Affidavit, (See E465; E385; E366-E368.) and the Cicilline letters described in paragraph 17 of Appellant's Affidavit (See E462, E401-402.) unequivocally show that Appellant has raised the issue of personal assets seized by the trustee, and therefore the existence of clear error exists concerning the facts. Appellant avers that this same information, excluding the Docket #137 entry, was proffered to the District Court. The other information in Appellant's Affidavit show that when the "*warrantless*" search and seizure was conducted that officers of the court knew that Appellant's personal assets were contained in the vaults at 141 Main Street, Woonsocket Rhode Island. Appellant further shows that a claim of personal assets being seized was made to the First Circuit back in 1994 in the criminal case. For all those reasons above, Appellant believes he has shown clear error in the opinions of both the Bankruptcy Court and the District Court for the District of Rhode Island.

E. SECOND STATEMENT OF THE ISSUES

Whether the bankruptcy court abused its discretion by granting the fee application of Edwards Angell Palmer & Dodge and Edward Bertozzi subsequent to Appellant showing discrepancies with the application while denying Appellant relevant discovery pertinent to this appeal?

Appellant's second statement of the issues asserts that the court order at issue violates the procedural protections of the Due Process Clause found in the Fourteenth Amendment of the United States Constitution. The Due Process Clause prohibits a deprivation of "life, liberty or property" without due process of the law.

I. BACKGROUND OF THE SECOND ISSUE

There is a long history of Appellant claiming due process and other constitutional violations committed by officers of the court. On December 12, 1994, in Ca. No. 94 1343 in the U. S. Court of Appeals for the First Circuit, Harold F. Chorney, Appellant, by his attorney, Scott A. Lutes, on appeal from a judgment of the U. S. District Court for the District of R. I., presented Brief of the Appellant. Appendix Exhibits included First, Fourth, Fifth, Sixth, and Ninth Amendment violation arguments (See e-503-E-561.) previously present to the District Court in 92-099P on March 11, 1993.

II. DISCUSSION

"It is only where an act or omission operates so as to deprive a defendant of notice or so as to deprive him of an opportunity to present such evidence as he has, that it can be said that due process of law has been denied."…. Mooney v Holohan, 294 U.S. 103 at 112. (Part of Ninth Amendment argument pg E-560.)

Federal courts must in all cases continue to have the power to hear constitutional claims and grant the necessary relief. Smith v. Robinson, 468 U.S. 992 (1984), 1012, n.15. In the only Supreme Court case to find preclusion of a §1983 constitutional claim, the Court indicated that constitutional claims under § 1983 may be precluded by another statute if the claims are "virtually identical." *Smith v. Robinson,* 468 U.S. 992, 1009 (1984). In *Smith*, the statutory claim was found to be "virtually identical" to the § 1983 claim because the statute at issue, like § 1983 itself, was created expressly to enable litigants to enforce their constitutional rights.

The denial of the motion to clarify violates the procedural due process protections of the Fourteenth Amendment to the United States Constitution. The denial penalizes Appellant without providing him the procedural protections required by federal law, including notice and an opportunity to be heard. The United States Constitution provides due process protections to *all* persons. The twelve issues listed on pages 3, 4 and 5 above is but a partial listing of procedural due process violations related to the Motion to Clarify.

When discretionary decision making goes awry and judgment is exercised arbitrarily, there is an abuse of discretion that may amount to a constitutional violation in the form of substantive due process, which is actionable under federal law. Substantive due process refers to the fact that the Fourteenth Amendment to the U.S. Constitution imposes both substantive and procedural requirements when it prohibits any government action that deprives "any person of . . .liberty, or property, without due process of law." U.S. Const. Amend XIV. This substantive component of the Due Process Clause "bars certain arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.'" Zinermon v Burch, 494 U.S. 113, 125 (1990) (quoting Daniels v. Williams, 474 U.S. 327, 331 (1986.) The fact that the personal assets of Appellant were seized and Appellant was deprived of property without due process of law bars government from denying standing to Appellant. It is a substantive due process right to defend oneself. The Fourteenth Amendment prohibits the deprivation of liberty or property without due process of law. A due process claim is cognizable only if there is a recognized liberty or property interest at stake. Board of Regents v. Roth, 408 U.S. 564, 69 (1972).

III.ARGUMENTS PRESENTED IN 1993 AND 1994

Due process is best defined in one word--fairness. Throughout the U.S.'s history, its constitutions, statutes and case law have provided standards for fair treatment of citizens by federal, state and local governments. These standards are known as due process. When a person is treated unfairly by the government, including the courts, he is said to have been deprived of or denied due process.

When Appellant felt he was being treated unfairly he presented some of the following arguments concerning Fourth Amendment Violations of his birth rights in Ca. No. 92-099P pretrial on March 11, 1993 using the rational of Anders v. California, 386 U.S. 738. The trial judge did not consider them (Tr. 4/21/93 pg. 6.) or require the government to file a response. (Tr. 3/11/93, pg. 17.) Some of the same arguments made in Ca. No. 92-099P and appealed in Ca. No. 94-1343 before the First Circuit, are presented below once again:

> "In order to qualify as a 'person aggrieved by an unlawful search and seizure' one must have been a victim of a search or seizure, one against whom the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else." Jones v U.S. 362 U.S. 257 at 261. (See pg. E-547.)

> "In the ordinary case, the Court has viewed a seizure of personal property as per se unreasonable within the meaning of the Fourth Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized." U.S. v Place, 462 U.S. 696 at 701 (1983.) (See pg. E-546.)

> "A warrantless search is per se unreasonable unless the government can demonstrate that it falls within one of a carefully defined set of exception to the Fourth Amendment's warrant requirements." U.S. v Munez-Guerra, 788 F2d 295 (1986.) (See pg. E546.)

Appellant also stated that, "The fourth amendment prohibition against unreasonable searches protects against warrantless intrusions during civil as well as criminal investigations. The reason is found in the 'basic purpose of this Amendment which is to safeguard the privacy and security of individuals against arbitrary invasions by government officials'.

> "If the government intrudes on a person's property, the privacy interest suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards." Franks v Smith, 717 F2d 183 at 186 (1983.) (See pg. E-546.)

IV. CONCLUSION

The actions directed by Trustee Cullen on August 15 and17, 1990 were in one word, "outrageous". The denial of due process is as plain as the nose on my face. (See pages E-550-E556.) Appellant knows of no statutory claim related to Title 11, in which Congress would authorize the actions committed on August 15 and 17, 1990 that would allow the circumvention of Appellant's constitutional rights including the taking of property without due process of law.

F. THIRD STATEMENT OF THE ISSUES

Whether the rulings of law are correct concerning standing or should be reviewed de novo?

I. BACKGROUND

We live in a nation governed by law and tempered with freedoms. The Founding Fathers realized that a nation must have both. They realized that a nation ruled by law with no freedoms would lead to tyranny and to be ruled by freedom without law would lead to anarchy. A system was created with a Bill of Rights, which provided freedoms to protect you and me from government itself. The first eight of these Amendments, or freedoms, were enumerated and the last two were unenumerated.

In discussing these freedoms in Lozano et al. v. City of Hazelton, 459 F. Supp. 2d 332 (M.D. PA) 2007 only the first eight amendments appear to be mentioned. "Fundamental to the American Legal Tradition is the notion that those accused of and convicted of crimes possess fundamental rights which are not abrogated simply because of such person's alleged behavior." A person accused of a crime is entitled, among other rights, to be free of unreasonable search and seizure; to the presumption of innocence; to the proof of his guilt beyond a reasonable doubt; to minimally competent legal representation; to access to any potentially exculpatory evidence......" See U.S. Constitution, Amendments IV, V, Brady v. Maryland, 373 U.S. 83, 87 (1963) (holding that the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or to punishment.

Similar to Lozano, involving illegal aliens, Appellant has been accused and convicted of crimes. And similar to Lozano, Appellant's fundamental rights should not be abrogated simply because of Appellant's alleged behavior. Appellant should be entitled, among other rights to be free from unreasonable search and seizure. Appellant should not be threatened or traumatized that he would have to leave his home and that he and his personal property be physically removed. (See E470.) Yet the Trustee on August 15 & 17, 1990, without a search warrant or any adequate notice to Appellant, removed personal and corporate assets from the premises of Appellant and in doing so broke into offices and removed documents. The Trustee and others, had surreptitiously in the context of both civil and criminal investigations, gained discovery without a warrant while denying due process to the Appellant. Subsequently to conceal their deeds, the Trustee withheld evidence favorable to the accused such as the videotapes, yellow inventory notebooks, sign in/out cards, records of inventories taken and then refused to give an accounting of the assets seized, sold and remaining at various stages of the bankruptcy and criminal proceedings. All of this resulted in the denial of due process to Appellant and a violation of Brady since the evidence requested by Appellant was material to either guilt or punishment. In addition, since the sentence of Appellant was based upon the alleged shortfall of the value of the assets of the estate of Cumberland Investment Corporation, any and all missing or unaccounted for assets or assets sold without being credited to Appellant would have a direct bearing upon the restitution which was part of Appellant's sentencing.

One difference between the Lozano case and this instant case is that Appellant is a citizen of the United States and may qualify for both Constitutional and Prudential standing. In this case, Appellant is being denied his rights under color of law in the bankruptcy proceedings. In Lozano, only Constitutional standing was granted.

II. DISCUSSION INVOLVING STANDING AND RULINGS OF LAW

Which set of rules apply if there is a conflict between laws governing civil cases and the laws governing a criminal case? The Bertozzi billings should have involved both criminal and civil case related billings. The Bertozzi billings involved meetings with the U.S. Attorney and others involved with the criminal investigation and prosecution of Appellant. These billings involved the appraisals and inventories of assets by the Examiner or by the Trustee, or both since Mr. Bertozzi represented both of them.

Mr. Bertozzi claims the billings for August 30, 1991 to December 22, 1993 are missing as a result of computer glitches. Yet Appellant has produced a copy of those billings to this court. (See E256-E281.) Subsequently, Appellant, seeking a clarification of the billings which were a basis for a $200,000 fine against Appellant, supplied a copy of the discrepancies between the billings of Mr. Cullen and the Bertozzi Billings in PETITIONER'S MOTION TO ASSIST AND HELP THE COURT CONCERNING THE FIRST AND FINAL APPLICATION FOR FEES AND EXPENSES OF EDWARDS ANGELL PALMER & DODGE LLP. (See E387-E399.)

Appellees argue that Appellant lacks standing to bring this Motion to Clarify while Appellant argues that he has standing in different ways. First of all Appellant has standing because he has personal property, seized by the Trustee which is missing. Secondly, Appellant has standing because he was convicted of a crime and information related to "punishment" and possibly guilt is being withheld by the Appellees.

III. ARGUMENT

In the District Court's Analysis of Standing, referencing Great Road Serv . Ctr., Inc. v Golden, 304 B.R. 547, 550 (B.A.P. 1st Cir. 2004.) the court states that the addressed bankruptcy standing standards are,

"narrower than Article III standing. Only a person aggrieved has standing to challenge a bankruptcy court order; the challenged order must directly and adversely affect the appellant's pecuniary interests. A person aggrieved is one whose property is diminished, burdens are increased, or rights are impaired by order on appeal."

Article III states that the judicial power of the federal courts extends only to cases and controversies which arise under the Constitution, federal laws of the United States and its treaties. A determination that a person lacks standing means that person is not the proper party to bring the issue before the court for adjudication. The Standing Doctrine is viewed as a tool that promotes both Separation of Power and judicial efficiency. The limiting of cases before the courts promotes judicial efficiency, and this limiting also improves decision-making ability of the judiciary through ensuring a specific controversy and that an advocate with a stake in the outcome is present to pursue the matter.

Four requirements must be met before a party will be granted standing in the federal judiciary. The first three requirements are based upon Article III as Constitutional barriers to standing, and the last is an exercise of judicial restraint which may be overridden by Congressional statute.

CONSTITUTIONAL BARRIERS TO STANDING

The Supreme Court has held that "the standing question in its Art. III aspect is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf.'" Simon, 426 U.S. at 38 (quoting Warth, 422 U.S. at 498-99). The Court has described three elements that comprise the "irreducible constitutional minimum of standing." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

The first requirement is that the parties are adversaries and that the plaintiff has suffered or imminently likely to suffer a distinct and palpable injury. Additionally, a plaintiff seeking declaratory or injunctive relief must show a likelihood of injury in the future. City of Los Angeles v. Lyons, 461 U.S. 95 (1983). Injuries which are sufficient to satisfy this requirement have generally been found to be an injury based on the common law and injuries based on a violation of the Constitution.

Appellant has argued, quoting Troutman, 286 F.3d 364, 6th Cir. 2002, that he is an aggrieved party with a financial stake in the order. Using the logic of Los Angeles v. Lyons, 461 U. S. 95, 102 (1983) where "Past wrongs were evidence bearing on whether there is a real and immediate threat of repeated injury," what could be a more compelling argument of injury than the past loss of both liberty and property? Besides diminishing the property of Appellant, Appellant has demonstrated that the order increases his burdens and most importantly impairs his rights. Appellant has supplied a myriad of examples of being denied full and fair hearings, showing an infringement of individual rights. See District Court Docket # 13, 14, Brief of Appellant, dated August 19, 2008, pages 14-16.

The second and third requirements are that the named defendant(s) be the causation of the injuries and that the injury is redressable through the court. The plaintiff must show that the injury is fairly traceable to the defendant through a causal nexus linking the action of the defendant with the injury. An injury caused by the defendant(s) can be directly compensated for by the court.

Appellant had met the second and third requirements. He has demonstrated that the Appellees in this case have denied discovery to Appellant in both the criminal and the civil proceedings. This history of failure by officers of the court to disclose or produce materials in discovery so that Appellant can present his case was the second issue presented in Brief of Appellant on August 19, 2008. Appellant presented events which happened in both the civil and criminal arenas. On December 27, 2008, Appellant supplemented the Appellant Brief to emphasize the affect of the lack of production in the criminal trial by officers of the bankruptcy court. Basically, the lack of production denied Appellant the utilization of the defense best suited to vindicate his rights. Appellant's counsel, rather than pursuing the constitutional arguments

Appellant proffered, chose another trial strategy. There should be no denial of standing to Appellant using Constitutional barriers in the criminal action.

However should there be a denial of standing in the civil bankruptcy case to gather information concerning issues raised in the criminal case, despite the fact that Appellant has demonstrated that he is an aggrieved party, it would be an affront to the Constitution and to fundamental fairness.

PRUDENTIAL BARRIERS TO STANDING

The fourth requirement involves judicial restraint. Judicial restraint has two aspects to its nature. The first is the use of discretion in granting certiorari, and the second is a set of prudential rules used to deny a party standing in a particular case. The prudential restraint rules focus on whether the plaintiff's own rights are being asserted, or whether someone else's rights are being asserted. These prudential restrain rules seem similar to the "aggrieved party rules" stated in Great Road Serv. Ctr., Inc. v Golden, 304 B.R. 547, 550 (B.A.P. 1st Cir. 2004.)

There can be little doubt that the Appellant is the "aggrieved party" asserting his own rights. The Appellant has championed his own rights throughout the criminal and the civil proceedings and in doing so has constantly questioned the lack of production, the denial of due process and the lack of fundamental fairness resulting from same.

NINTH AMENDMENT DISCUSSION:

Appellant continues to argue that "the right to defend oneself" is a basic fundamental right and even though it is not enumerated in the Constitution, it is like the right to privacy, a right that is retained by the people.

There is case law that says that the prosecution has a constitutional duty to disclose evidence favorable to the accused when such evidence is material to guilt or punishment. Appellant has proffered these Brady Arguments in the Supplemental Brief of the Appellant, dated December 27, 2008, Docket #22, page 16. "The lack of corroborating information and evidence, such as the yellow inventory notebooks, sign in/out cards, videotapes of assets of Cumberland Investment Corporation, inventories of the assets and transcripts of the different inventories and movements of the assets, prevented counsel for Appellant from utilizing the information in paragraph 3. of Addendum to Travel and Facts in preparing a defense based upon Appellant's claims of missing, switched and mishandled assets in the criminal case. (See TR 3/9/94 pages. 44-48, E429-433.)

NINTH AMENDMENT ARGUMENT

What are the ramifications if Appellant has the rightful standing to request information concerning his criminal conviction or punishment, yet the civil bankruptcy proceeding continues to deny Appellant the rightful standing to request clarifications related to guilt or punishment?

Appellant avers, that it is because of unknown situations like this that the Founding Fathers intended for individuals like the Appellant to enjoy the fundamental right of defending himself. Appellant believes that the intent was, in cases similar to this one, for the basic and fundamental rights of individuals to be protected through the Ninth Amendment. (1.)

The Ninth Amendment serves as a "savings clause to keep from lowering, degrading or rejecting any rights which are not specifically mentioned in the document itself." Gibson v. Matthews, 715 F. Supp 181 at 187 (1989).

The savings clause of the Ninth Amendment would kick in to protect the fundamental freedom of defending oneself and trump the civil statutory "rules" of law even if Appellant could not prove that he has standing because his personal

(1.) Appellant made Ninth Amendment Arguments before the District Court on March 11, 1993 and also before the First Circuit in Ca. No. 94-1343 when Mr. Lutes presented Anders styled pleadings at Appellants insistence. In both those instances, Appellant argued that his rights were being violated when Appelant was enjoined from contacting witnesses in his defense in the bankruptcy case. Appellant argued that the fundamental right of defending himself was guaranteed by the Ninth Amendment to the Constitution. (See E559 to E561.)

assets were missing or even did not have any personal property at all. Appellant relies upon the same logic in his current Ninth Amendment Arguments as he did back in 1993 and 1994 (See E559-E561.), because both sets of arguments involve the Appellant seeking fairness in a process to defend himself:

"...we rightfully place a prime value on providing a system of impartial justice to settle civil disputes, we require even a greater insularity with fairness in criminal cases. Perhaps this is symbolically reflected in the Sixth Amendment's requirements of an "impartial jury" in criminal cases whereas the Seventh amendment guarantees only "trial by jury" in civil cases." Hirschkop v. Snead, 594 F2d 356, 4th Cir. 1979. (See E-560.)

Appellant avers that the Ninth Amendment in this situation protects his standing. Appellant avers that all he should have to show in order to have standing in this instant case is that he was being denied fair treatment and that there were assets missing and or unaccounted for that would affect his guilt or punishment in accordance with Brady.

IV. CONCLUSION:

Hearings concerning the billing records of the professionals in the bankruptcy proceedings, including the Bertozzi billing, the subject of the Motion to Clarify, have brought to light methods and procedures used to deny Appellant due process.

In this bankruptcy case, virtually any party of interest could object or respond to a motion or not. However the court set up a set of circumstances where only Appellant was being denied the ability to respond or object. This set of circumstances is unfair and thus impaired and denied due process to the Appellant.

Through these 'professional' billings Appellant has developed a case showing that there is a history of failure by officers of the court to disclose or produce materials in discovery so that Appellant could present his case. Appellant argued that this could constitute misconduct within the purview of Rule 60(b)(3) and cited Anderson v. Cryovac, Inc. , 862 F2d 910, 923 (1st Cir. 1988.)

Appellant claims that the lack of production of relevant discovery is an issue that is pertinent to this appeal. Appellant has demonstrated that Appellees have not even responded to basic correspondence from Appellant or his attorneys. Appellant demonstrated that failure to disclose or produce discovery so that Appellant could present his case was the strategy used in both the criminal and the bankruptcy cases.

Appellant in exercising his rights claims that :

"In our adversary system of justice, each litigant remains under an abiding duty to take the legal steps that are necessary to protect his or her own interests." Cotto v United States, 993 F.2d. 274, 1st Cir. 1993 at 278.

And while championing his own rights in the spirit of Cotto, Appellant has presented to the court those reasons in fact and law that the bankruptcy court's decision of May 7, 2008 and May 8, 2008, should be rejected.

Appellant has presented information to this court, directly related to issues in this case which prove that there are numerous problems with the administration of this bankruptcy case. Appellees have hidden the truth for years by a lack of production of pertinent inventories and appraisals while arguing that issues involving accountability of the assets of this case have been long settled. But these issues are not settled when Appellees cannot answer a simple question like, "What happened to the golden frogs?"

Information and sworn testimony contained in this brief shed light upon the events of August 15 and 17, 1990, including the basis for the sentencing of Appellant in the criminal case as well as the lack of "accountability" of personal and corporate assets seized. Appellant prays that this court, in light of the lack of veracity of the billings and testimony of the Appellees, examine the credibility of those Appellees and the courts' former reliance upon their dubious testimony in decision making and perform a 'de novo' review of the entire record related to cases 92-099P and 89-11051 and any other remedy which metes as just and fair.

Respectfully submitted,

s/Harold F. Chorney

16 Spring Drive

Johnston, R.I. 02919

401 934-0536

UNITED STATES DISTRICT COURT FOR THE DISTRICT COURT OF RHODE ISLAND

IN RE: CUMBERLAND INVESTMENT CORPORATION,

Debtor

HAROLD F. CHORNEY,

Appellant

v.

JASON D. MONZACK and JOHN F. CULLEN

Appellees

C.A. No. 08-189ML

MEMORANDUM AND ORDER

This matter is before the Court pursuant to Harold F. Chorney's ("Chorney') appeal from orders of the United States Bankruptcy Court for the District of Rhode Island. For the reasons set forth below, Chorney's appeal is DENIED and the orders of the bankruptcy court are AFFIRMED.

1. BACKGROUND

The bankruptcy proceedings of the Cumberland Investment Corporation ("CIC") began in 1989 when CIC involuntarily petitioned for bankruptcy. An outline of the relevant history follows.

The bankruptcy court issued an injunction against Chorney in July of 1991, citing his obstructive conduct and prohibiting him from intervening or "otherwise participat[ing] in proceedings relating to sales or other disposition of estate assets." In re Cumberland Investment Corp., BK No. 89-11051, slip op. at 1-2 (Bankr. D.R.I. July 3, 1991). The bankruptcy court specifically found that "Chorney ha[d] deliberately and continuously acted in bad faith to obstruct and to hinder the efficient administration of the estate, which action has been very damaging, expense-wise, to the estate and its creditors." Id. The bankruptcy court subsequently imposed a civil contempt sanction against Chorney in the amount of $200,000 due to his bad faith and abuse of the bankruptcy process. In re Cumberland Investment Corp., BK No.89-11051, slip op. at 1-2 (Bankr. D.R.I. July 2, 1992) aff'd sub nom Chorney v. Weingarten, 7 F.3d 218 (1st Cir. 1993), cert denied, 510 U.S. 1200 (1994). In its order, the bankruptcy court found that Chorney "filed frivolous pleadings, willfully interfered with and obstructed the administration of the case, and generally And in bad faith abused the bankruptcy process, causing the estate and its creditors significant economic harm." Id. According to the Appellees, this sanction has not yet been paid by Chorney.

On November 2, 2004, the bankruptcy court issued one of the orders that Chorney now appeals. That order imposes sanctions on Chorney and strikes Chorney's "Motion To Clarify the Class Action Award [] and Require Chapter 7 Trustee Provide [*sic*] a Complete and Detailed Accounting of the Estate Assets," as well as his "Second

Request for Admission." In re Cumberland Inv. Corp., No. 89-11051, 2004 WL 2616318 (Bankr. D.R.I. Nov. 3, 2004). The bankruptcy court found that Chorney lacked standing and that his "hyperactivity and ludicrous conduct throughout this case is marked by his incessant acts of bad faith and abuse of the system from the inception of this bankruptcy in 1989." Id., at 1. The bankruptcy court held that Chorney had directly violated the 1991 injunction by filing the motions. Id. The First Circuit has since dismissed Chorney's appeal of that order for lack of jurisdiction, because he did not pursue a timely intermediate appeal to this Court or the Bankruptcy Appellate Panel. In re Cumberland Investment Corp., No. 07-8038 (1st Cir. Aug. 5, 2008). Chorney concedes that he failed to timely appeal the order but contends that the bankruptcy court violated Fed. R. Civ. P. 60(b)(6) by precluding his access to the courts. Brief of Appellant, In re Cumberland Investment Corp. at 11-12 (No. 08-189).

Between July and October of 2007, both Edwards, Angell, Palmer and Dodge, LLP ("Edwards Angell")and Trustee Cullen filed applications for final compensation, which prompted Chorney to file a "Motion to Clarify First and Final Application for Fees and Expenses of Edwards Angell Palmer & Dodge LLP" on February 14, 2008, and an "Offer of Proof Concerning Standing" on April 25, 2008.

In May of 2008, the bankruptcy court issued an order approving the first and final fee application of Edwards Angell, denying Chorney's "Motion to Clarify First and Final Application for Fees and Expenses" of Edwards Angell, and holding that Chorney lacks standing to participate regarding claims of professional expenses against the bankruptcy estate. Chorney, filing pro se, subsequently filed this "Motion and Memorandum to Appeal and/or Amend Bankruptcy Orders Dated November 3, 2004 and May 8, 2008," which this Court treats as an appeal.

II: Standard of Review

An aggrieved party may appeal to this Court "from the final judgments, orders, and decrees" of a bankruptcy court. 28 U.S.C. § 158(a)(1). In a bankruptcy appeal, this Court accepts the findings of fact by bankruptcy court unless they are clearly erroneous. LaRoche v. Amoskeag Bank (In re LaRoche), 969 F.2d 1299, 1301 (1st Cir. 1992). A bankruptcy court's decision "may only be rejected if this Court has a 'definite and firm conviction that a mistake has been committed.'" Forbes v. Four Queen Enterprises, Inc., 210 B.R. 905, 909 (D.R.I. 1997) (quoting United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948). Rulings of law, however, are reviewed de novo. LaRoche, 969 F.2d at 1301 (citing Bartmann v. Maverick Tube Corp., 853 F.2d 1540, 1543 (10th Cir. 1988)).

III. Analysis

Standing

A primary issue in the case at hand is whether Chorney has standing to address the application for professional fees and expenses of Edwards Angell against the bankruptcy estate. The Bankruptcy Appellate Panel of the First Circuit has addressed bankruptcy standing standards, holding that it is:

Narrower than Article III standing. Only a person aggrieved has standing to challenge a bankruptcy court order; the challenged order must directly and adversely affect the appellant's pecuniary interests. A person aggrieved is one whose property is diminished, burdens are increased, or rights are impaired by order on appeal.

Great Road Ser.Ctr., Inc. v. Golden (in re Great Road Serv. Ctr., Inc.) 304 B.R. 547, 550 (B.A.P. 1st Cir. 2004)(internal citations and quotations omitted). An appellant's standing is a threshold jurisdictional issue. In re Shkolnikov, 337 B.R. 1, 4 (B.A.P. 1st Cir. 2006), appeal dismissed, 470 F.3d 22 (1st Cir. 2006). Whether an individual is aggrieved for purposes of appeal is "a factual determination generally made in the first instance by the bankruptcy court." Id. (citing Spenlinhauer v. O'Donnell (In re Spenlinhauer), 261 F.3d 113, 118 (1st Cir. 2001)). This Court, then, reviews that factual determination for clear error. See LaRoche, 969 F.2d at 1301.

Chorney argues that he is an aggrieved party with some personal, non-corporate interest in some of the property seized. In his "Statement of Issues," Chorney also contends that the $200,000 sanction imposed by the bankruptcy court provides him with standing. He further argues that time records of the billing of Cullen and the billing of Mr. Edward Bertozzi of Edwards Angell from August 31, 1991 to December 22, 1993 are inconsistent with each other and with other billings. Chorney argues that this inconsistency provides the basis of his pecuniary interest, giving him standing to challenge the bankruptcy court's orders. The bankruptcy court did not rule on Trustee Cullen's application for expenses and fees in May of 2008 and thus Cullen's application is not a part of this appeal.

The Appellees argue that the determination on the fee application of Edwards Angell does not have any affect on Chorney, because he does not stand to receive and funds from the bankruptcy estate. Chorney did not file a proof of claim in this bankruptcy proceeding and thus lacks standing as a creditor. The Appellees contend that Chorney has only recently begun to argue that he has some personal interest in the estate, though the bankruptcy estate has been pending since 1989. Appellees further contend that Chorney's argument that his court-ordered sanctions constitute a pecuniary interest in the proceedings should be "dismissed out of hand." Brief of Appellee Monzack, In re Cumberland Investment Corp., at 6 (No. 08-189).

In its May 7, 2008 bench decision, the bankruptcy court adopted the Appellees' arguments against Chorney's standing in their entirety. Transcript of Record at 26:20 17:2, In re Cumberland Investment Corp., BK No. 89-11051 (May 7, 2008). This decision was incorporated by reference in the bankruptcy court's May 8, 2008 order, denying Chorney's Motion to Clarify. In re Cumberland Investment Corp., BK No. 89-11051 (May 8, 2008).

This Court agrees with the bankruptcy court's finding that Chorney is not a person aggrieved for purposes of this appeal. Therefore this Court finds that the bankruptcy court's determination that Appellant Chorney lacks standing does not constitute clear error, Accordingly, the Appellant's appeal of the order of May 8, 2008, and the bench order of May 7, 2008, is denied.

The November 3, 2004 Bankruptcy Court Order

Chorney contends that the order of November 3, 2004 precludes his participation in the bankruptcy proceedings, in violation of his constitutional rights. A notice of appeal is timely if filed within ten days after the entry of the judgment. Fed. R. Bankr. P. 8002(a). Chorney failed to timely appeal this order. Instead, on November 3, 2007, Chorney filed a "Motion to Appeal and/or Amend Bankruptcy Order, Dated November 3, 2004" with the First Circuit. The First Circuit determined that it lacked jurisdiction over the appeal, as Chorney did not timely appeal the order to this Court or to the Bankruptcy Appellate Panel and failed to obtain certification under 28 U.S.C. § 158(d)(2). In re Cumberland Investment Corp., No. 07-8038 (Aug. 5, 2008).

Chorney has attempted to appeal the November 3, 2004 bankruptcy order with this appeal, filed initially with this Court on May 13, 2008. The filing of this appeal is three and a half years after the original order was entered. As a result, the appeal is untimely. The Appellant contents that "untimely request for relief is justified and in the public interest." This Court finds no legitimate support for such an untimely request.

Chorney further contends that the bankruptcy court's orders and judgments have effectively precluded him from accessing the courts, violating Fed. R. Civ. P. 60 (b)(6), which provides relief from the final judgment or order for "any other reason that justifies relief". Rule 60 offers "the only avenue of relief from final civil judgments other than by appeal or independent action". Lubben v. Selective Serv. Sys. Local Bd. No.27,453 F.2d 645, 648 (1st Cir.1972). In particular, a party invoking Rule 60(b)(6) must assert a reason "other than those enumerated in 60 (b)(1)-(5), and must be sufficient to justify the relief sought". Id., at 651. Furthermore, "the residual clause, like Rule 60(b) generally, is not a substitute for an appeal, and in all but exceptional circumstances, the failure to prosecute an appeal will bar relief under that clause." Id. (footnote omitted). Having determined that Chorney's appeal is intimately, this court further finds that Chorney has failed to advance any legitimate reasons for relief under Rule 60.

The Appellant's appeal of the November 3, 2004 bankruptcy order is accordingly denied.

Arguments not part of this appeal

Chorney raises a number of other issues on appeal, including an alleged failure to disclose or produce materials in discovery which he argues constitutes a violation of Fed. R. Civ. P. 60(b)(3). These issues have been long settled., For example, Chorney's request for an accounting of assets was denied in March of 2002 on the basis of lack of standing and the barring effect of prior final orders, and this determination was sustained on appeal and the United Stated Supreme Court denied certiorari. See In re Cumberland Investment Corp., No. 02-1976, 2003 WL 21435745 (1st Cir. June 20, 2003), cert. denied, 540 U.S. 1022 (2003). In any case, the relevant discovery was not at issue in May of 2008 and it is not pertinent to this appeal.

IV. For the foregoing reasons, this Court concludes that the Appellant lacks standing and prior final order and judgments bar his claims. Accordingly, Chorney's appeal is DENIED and the orders of the bankruptcy court are AFFIRMED.

SO ORDERED.

s/Mary M. Lisi

Chief United States District Judge

December 18, 2008

United States Court of Appeals

For the First Circuit

No. 07-8038

IN RE: CUMBERLAND INVESTMENT CORPORATION,

HAROLD F. CHORNEY

Petitioner

Before

Lynch, Chief Judge

Torruella and Boudin, Circuit Judges.

JUDGMENT

Entered: August 5, 2008

Appellant Harold Chorney has filed a motion in this court seeking "to appeal [from] and/or amend" a bankruptcy court order dated November 3, 2004. He has done so without pursuing an intermediate appeal to the district court or the Bankruptcy Appellate Panel. Even if the instant appeal could somehow be deemed timely, this court lacks jurisdiction, absent certification under 28 U.S.C. § 158(d) (2), to entertain appeals directly from the bankruptcy court. *See*, e.g., In re Wright, 492 F.3d 829, 831 (7th Cir. 2007) (accepting certified appeal from bankruptcy court).

The appeal is dismissed for lack of jurisdiction.

By the court:

s/Richard Cushing Donovan, Clerk

cc:

Harold Chorney

John Boyajian

John Fitzgerald, III

Matthew McGowan

Jason Monzack

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND

Harold F. Chorney

Appellant

v. CA 08-189ML

Jason D. Monzack

John F. Cullen

Appellee

ORDER

The above listed bankruptcy case is on appeal to this Court. In the interest of uniformity and orderly presentation of facts and legal issues, counsel will comply with the following procedures.

Within 10 days of the date of this order, the appellant(s) will file a statement of the issues to be resolved on appeal and a copy of said statement shall be served on the appelle(s).

The appellee(s), within 5 days of the filing of said statement, may, if desired, file a response.

Within 30 days of the date of this order, all counsel will file briefs, complying with all pertinent provisions of Rule 28, Federal Rules of Appellate Procedure. Reply briefs will be filed within 10 days thereafter.

The appeal to this Court shall be taken with same concern as though it were to the First Circuit Court of Appeals.

SO ORDERED:

s/Mary M. Lisi

Chief U.S. District Judge

July 21, 2008

Entered as an Order of this Court on July 21, 2009.

s/Barbara Barlette

Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND INVESTMENT CORPORATION

PETITIONER'S MOTION AND MEMORANDUM

IN SUPPORT OF MOTION TO APPEAL AND/OR AMEND BANKRUPCY ORDER, DATED NOVEMBER 3, 2004

Now comes Harold F. Chorney, pro se, a petitioner with property interests and an interested party in the above captioned matter and requests this court amend the bankruptcy order dated November 3, 2004. (See Exhibit A.) This order, reverts back to court orders dated July 3, 1991, and July 2, 1992. Whether final or interlocutory the November 3, 2004, court order has had a final and irreparable effect on the Petitioner's rights resulting in preclusion to access to the courts.

This order spotlights one method by which Petitioner is being denied evidence necessary to establish facts in dispute by officers of the court.

Jurisdiction

The Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the District Courts of the United States....28 U.S.C.A. §1291 and interlocutory orders of the District Courts... 28 U.S.C.A. §1292, when they have a final and irreparable affect on the rights of the parties. See **Cohen v. Beneficial Industrial Loan Corporation**, 69 S.Ct. 1221, 1225, 1949.

Question of Finality of November 3, 2004, order

There is some question concerning the finality of the November 3, 2004, court order in this instant case, but there is no question concerning the irreparable effect on the rights of the parties in this eighteen year old case. According to the docket 914a, dated 10/05/2005, allegedly the bankruptcy court modified the November 3, 2004, order allowing Petitioner to file objections to Trustee Motion for Examination. This was *after* ordering Petitioner to testify in court on October 5, 2005. On October 28, 2005, Petitioner filed objections to Trustee's Motions for Examination. However, Petitioner never received any written notification of a modified court order.

Challenges to the Bankruptcy Order

"The finality of the bankruptcy order mandates that ...any future challenges to that order will be either in the form of appeal or amendment of the judgment." Cert. denied, 498 U.S. 819, 111 S. Ct. 64, 112 L.Ed. 2d 39 (1990), an appeal of **Hendrick v. Avent**, 891 F.2d 583, Fifth Cir.

According to F.R.C.P., Rule 60(b), "Upon motion and upon such terms as are just, the court may relieve a party ...from a final judgment, order, proceeding for the following reasons...Rule 60(b)2 newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); Rule60(b)(3) fraud....misrepresentation, or other misconduct of the adverse party; Rule 60(b)(6)any other reason justifying relief from the operation of the judgment.

STATEMENT OF THE ISSUES

Whether the sanctions of the November 3, 2004 order as applied fall within the purview of F.R.C.P. Rule 60(b)(6) in that the imposition of sanctions preclude Petitioner of access to the courts.

Whether the history of failure by officers of the court to disclose or produce materials in civil and related criminal discovery so that Petitioner can present his case, can constitute misconduct within the purview of Rule 60(b)(3). See **Anderson v. Cryovac, Inc.**, 862 F2d 910, 923. (1st Cir. 1988.)

Whether Judge Votolato has engaged in conduct prejudicial to the effective and expeditious administration of the case thus committing wrongs against the institutions set up to protect and safeguard the public.

Whether Petitioner can obtain a fair hearing and be granted due process and equal protection under the law with Judge Votolato presiding over this case.

BACKGROUND

Petitioner has been involved with two related groups of proceedings before this court. There have been appeals related to a civil bankruptcy case, 89-11051ANV, and a related criminal case 92-099P. A lengthy Designation of the Record was presented to this court in relation to the last appeal, Ca. No. 02-1976, which Petitioner wishes to incorporate into this pleading.

Appeal No. 02-1976 was denied by the Circuit Court and an appeal of this decision was not granted certiorari by the Supreme Court of the United States.

Many of the events, related to the sanctions of November 3, 2004, imposed upon Petitioner refer to events ruled upon in these past appeals.

STATEMENT OF THE CASE FOR FIRST ISSUE

Whether the sanctions of the November 3, 2004 order as applied fall within the purview of F.R.C.P. Rule 60(b)(6) in that the imposition of sanctions preclude Petitioner of access to the courts.

TRAVEL AND FACTS

On November 3, 2004, the Bankruptcy Court for the District of Rhode Island issued an order: ORDERS: (1) GRANTING MOTION TO STRIKE AND (2.) IMPOSING ADDITIONAL SANCTIONS. (See Exhibit A.) This order refers to ORDER, dated July 3, 1991. (See Exhibit B.) and ORDER, dated July 2, 1992. (See Exhibit C.)

On July 26, 2007, Petitioner received a 38 page document entitled FIRST AND FINAL APPLICATION FOR FEES AND EXPENSES OF EDWARDS ANGELL PALMER & DODGE LLP. (See Exhibit D.) The certificate of service is dated July 20, 2007. The other two parties serviced electronically were Jason D. Monzack, Trustee and Leonard DePasquale, U.S. Trustee.

On July 30, 2007, Petitioner received Notice of final application for fees and expenses of Edwards Angell Palmer & Dodge LLP, a one page document, dated 7/23/07, which was sent to all creditors and interested parties. (See Exhibit E.) See Docket 931-932. According to this document, "PURSUANT TO R.I. LBR 1005-1(d), within TEN (10) days of service of this NOTICE, *any party* who objects to the fees and expenses sought in the referenced Application shall serve and file with the Clerk of Court, with copies to the local office of the United States Trustee and interested parties, an Objection/Response to said Application.

On August 3, 2007, Petitioner sent a package (See Exhibit F.) to the Judge which included a letter to Judge Votolato, with two attachments –PETITIONER'S MOTION TO CLARIFY FIRST AND FINAL APPLICATION FOR FEES AND EXPENSES OF EDWARDS ANGELL PALMER & DODGE LLP, AND PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO CLARIFY FIRST AND FINAL APPLICATION FOR FEES AND EXPENSES OF EDWARDS ANGELL PALMER & DODGE LLP. Certification to Mr. Monzack, Trustee, Mr. DePasquale, AUST, and to Edward J. Bertozzi, Jr. was included with the Motion and Memorandum to Clarify the First and Final Application for Fees and Expenses of Edwards Angell Palmer & Dodge LLP. The package containing the letter to the court requesting authorization to send the attachments to the appropriate parties. The package was sent by certified mail.

Several times per day Petitioner would check on line to see when the package was signed for. Even though Petitioner was out of town, he still checked to see if anyone had signed for the package. When Petitioner returned to town he went to the Providence Post Office to find out what had happened. Virtually everyone said that if the package was not returned, that they probably received it. Petitioner met with John Clark, Consumer Affairs Representative, who contacted the court and then issued a letter to Petitioner, dated August 20, 2007.

On August 20, 2007, Petitioner picked up the letter from Mr. Clark in person and then sent a second package to Judge Votolato, by Restricted Delivery that same day. (See Exhibit G.) The package was signed for on August 21, 2007.

On September 6, 2007, a Hearing was held at the bankruptcy court in which Mr. Monzack, when asked the status of the case, said he was waiting for the professions to file their billings. Mr. Monzack said that Mr. Bertozzi is revising his billing and Mr. Cullen is on the verge of filing. Mr. Monzack asked for a 30 day continuance to file the final report, which was granted. Judge Votolato stated to file the final report regardless of receiving the

Bertozzi or Cullen billings. The next hearing was scheduled for October 4, 2007.

On October 4, 2007, a Hearing was held in the bankruptcy court in which Mr. Monzack and Mr. Cullen testified. Mr. Cullen said he was going to file a Supplemental Billing and that he had not filed a billing for the last two years he was trustee because he did not think there was any money in the estate.

The judge gave Mr. Cullen until October 26, 2007, to file the Supplemental Billing. (See EXHIBIT V, Billing, E-247 to E-255 with Chronological Detail, dated 9/26/91.)

No notice to the creditors or other parties was given that Mr. Cullen would be testifying on October 4, 2007, nor as to the nature of the hearing. No mention was made of the billing of Mr. Bertozzi at the October 4, 2007. Hearing.

On October 11, 2007, Petitioner received Notice of Final Report of Trustee, Jason Monzack.

On October 11, 2007, Petitioner prints copy of the Chapter 7, Trustee billing, a 47 page document from his Pacer account.

On October 16, 2007, Petitioner, who was reviewing the billing records of Trustee, Monzack, telephoned Mr. Monzack's office and spoke to Crystal, Monzacks secretary to obtain a copy of Mr. Monzack's billing because there are areas in the printout which are blank or incomplete. Crystal said she would mail me a copy of the billing.

On Oct. 22, 2007, having not received a copy of the billing, Petitioner telephone Mr. Monzack's office at 401 946-3200 at 10:00 A.M. Crystal told Petitioner, "I have to look at the pleading first, I have not sent it yet."

To date, Petitioner has received no response to the contents of this August 20, 2007, package, Exhibit G.

On Oct. 26, 2007, Petitioner received copy of Monzack Billing of 10/11/07. Incomplete areas still existed in this billing.

DISCUSSION

Petitioner, who has presented documentation to this court concerning his service connected stress disorder, cannot recall why the Nov. 3, 2004, order was not appealed, although he felt overwhelmed with the situation subsequent to the Supreme Court not granting certiorari. However, by not appealing the Nov. 3, 2004 Court Order, Petitioner should have no expectation that the court would ignore and/or not respond to his motions submitted to chambers, thus precluding him from access to the courts.

Petitioner was in good faith seeking clarifications of the Bertozzi billings. Some of the information in the Bertozzi and Monzack billings have not been previously available to Petitioner in the last 18 years.

ARGUMENT

Due to the lack of response to the August 20, 2007, package, Petitioner is now precluded from asking and receiving a clarification of the billing of Mr. Bertozzi and other professionals, like Mr. Monzack, and possibly the billings of Mr. Cullen and Mr. Boyajian.

A legal standard for granting Petitioner's Motion to Amend the November 3, 2004, court order is contained in a Fifth Circuit decision where "the imposition of sanctions must *not* result in total, or even significant, preclusion of access to the courts". **Thomas v. Capital Sec. Servs., Inc.**, 836 F.2d 866, 882 n.23 (5th Cir. 1988) (en banc)

There can be little doubt that the November 3, 2004, court order, as applied, has denied Petitioner' preclusion of access to the courts, since Petitioner has received no response to his letters dated August 3, 2007, and August 21, 2007.

Preclusion of access to the courts, not only results in an unlevel playing field, the lack of response has had a chilling effect upon Petitioner, fearful to participate in any manner in this case.

To tie and gag one of the few parties with the knowledge and ability to question the billing of professionals in this 18 year old case, because of his overall continuity of events, seems manifestly unfair and unjust.

CONCLUSION

This court should grant Petitioner's Motion within the purview of F.R.C.P. Rule 60(b)(6) and amend the November 3, 2004, court order and any other remedy that is just.

STATEMENT OF THE CASE FOR THE SECOND ISSUE

Whether the history of failure by officers of the court to disclose or produce materials in discovery so that Petitioner can present his case, can constitute misconduct within the purview of Rule 60(b)(3). See **Anderson v. Cryovac, Inc.**, 862 F2d 910, 923. (1st Cir. 1988.)

There are two distinct areas of non disclosure. One area involves the non disclosure of evidence in preparation for a criminal trial, including ongoing discovery, and the other involves the non disclosure of evidence at all stages of a civil bankruptcy. The civil area involves a history of failure to disclose billing information of the financial professionals, and secondly involves a history of failure to provide documentary and other evidence, related to an accounting of the assets of the estate of Cumberland Investment Corporation. Both civil and criminal areas are interrelated and the chronology of events is being presented together.

TRAVEL AND FACTS

Petitioner, Harold F. Chorney, was the President of a company named Cumberland Investment Corporation. (CIC) CIC obtained a series of loans from Eastland Bank ultimately totaling $2,500,000 in 1989. To obtain these loans, Cumberland pledged uncirculated Mint State Silver Dollars and other assets as collateral. The number of coins held by Eastland Bank during this period was 7,826 silver dollars in May 1989.

In 1989, Eastland Bank, claiming an interest in all the assets of CIC, hired Sotheby's Auction House to appraise the collateral held by the bank. The Sotheby's appraisal was dramatically lower than the face value of the loan prompting an involuntary petition of CIC into bankruptcy and eventually criminal proceedings against Petitioner.

On December 1989, Judge Votolato appointed Michael Weingarten as Examiner in the bankruptcy case in which Petitioner was the Debtor in Possession.

On August 17, 1990, Petitioner was fired and the business was taken over by a Chapter 11, Trustee, John F. Cullen. By *warrantless* search, the assets and documents of CIC were seized and removed. (See Par. 33, 115 below.)

At a bankruptcy court hearing dated May 7, 1991, Petitioner, represented by attorney Oster, was seeking information concerning the billing practices of Michael Weingarten, Examiner in the Cumberland Investment Corporation case. (See Exhibit B-1.) Mr. Oster had taken the deposition of Mr. Weingarten, indicating that there were some double billings between Mr. Weingarten's other cases, where he served as Examiner or Trustee, and the Cumberland Investment case. Mr. Oster had requested documents, which were not produced by either Mr. Weingarten or his attorney Mr. Bertozzi for deposition.

A proposed order, related to the May 7, 1991 Hearing, was drawn up by Mr. Bertozzi concerning the production of documents. (See Exhibit B-2, Letter dated June 20, 1991 and ORDER.)

At hearing of May 22, 1991, MOTION OF PEOPLE'S LOAN & TRUST TO ADJUDGE TRUSTEE IN CONTEMPT OR TO COMPEL TRUSTEE TO COMPLY WITH PRIOR COURT ORDER OR FOR RELIEF FROM AUTOMATIC STAY MOTION OF EXAMINER TO SELL MOTION OF HAROLD CHORNEY TO ADJUDGE EXAMINER IN CONTEMPT BEFORE THE HONORABLE ARTHUR N. VOTOLATO, JUSBC, Judge Votolato vacates the order concerning production and no further discovery concerning billing was received by Petitioner. (See Exhibit B-3, pages 17-19 of May 22, 1991.)

On June 5, 1991, Letter from Weingarten of Cambridge Meridian Group to Bertozzi, his attorney at Edwards and Angell, on page 5 states that an employee of the Examiner, "Per Baverstam has already largely sorted through the remaining inventory with stamp and coin experts, and we have removed most, if not all, of the high-value inventory."

Subsequently, Petitioner is criminally indicted on referrals from the Examiner and Eastland Bank. The U.S. Attorney supplied a handwritten list of items in his possession.

NOTE: Handwritten list of 78 items supplied by US Attorney to the Defendant did not include the yellow inventory notebooks.

On January 8, 1992, Mr. Posner testifies at a bankruptcy court hearing attended by Petitioner, Trustee Cullen and his attorney Mr. Bertozzi. Petitioner had been enjoined from contacting witnesses by the bankruptcy court. Mr. Posner tells Judge Votolato,

> "I don't think, from a criminal standpoint, legally it would be appropriate for Mr. Chorney to be precluded from contacting potential witnesses in a criminal case.. . . I think it would almost be unconstitutional."
>
> "THE COURT: Okay. Before we leave this, if you decide, for whatever reasons, that there's no more U.S. Attorney or grand jury involvement and we're back to strictly civil, let me know, because then we'll go back to civil—..."

On July 14, 1992, FBI Agent Truslow tells the Grand Jury that 170 coins from the possessory collateral had been sold.

> "Now going back to that group that Chorney looked at, that 4,000 coins, of which Chorney pulled out 575 coins, Augustine looks at those coins, but at this point in time, there only exists 405 of them. Some of them were sold off." (G.J. Testimony, July 14, 1992, pg 35.)

On December 12, 1992, Eastland Bank fails and is taken over by FDIC, which also asserts an interest in all the assets of CIC.

On January 14, 1993, Donald Etnier and Barbara A. Quinn, of FDIC inspected the collateral being held in the 9 Safe Deposit Boxes at the Woonsocket office of Eastland Savings Bank and made an "approximate count" of the silver dollar inventory. According to a partial release from the FDIC, dated December 29, 2000, in response to an FOIA from Petitioner

April 7, 1993, Memo from John F. Brophy, FDIC to Barbara Quinn and Frank Cadigan, FDIC that states,

> "Barbara: I have just received a very strong call from Assistant U.S. Attorney Sy Posner relative to the scheduled coin appraisals, and stated that he was going to federal court to seek a Protective Order against FDIC of his evidence...Sy was very explicit, once again, that coins are sealed and must stay sealed. . . Sy asked that the appraisals would be postponed until after the trial..."

Yet on April 26, 1993, Memo's between Barbara Quinn and John F. Brophy in Legal FDIC Franklin says: Brophy, Subject Chorney/Cumberland: Any FDIC Inventory Ever Performed? Monday, April 26, 1993 7:55:44 EDT "B: As above; was there ever any Inventory of the coins ever performed by FDIC at closing: No appraisal as yet, of course; but ever an inventory?"

"John, **An inventory of the coins was done both in Woonsocket and Cranston.** Not every coin was counted. Our numbers are approximate. I have a copy if you would like to see it. Barbara" dated Monday, April 26, 1993

8:00:09 EDT (FOIA from FDIC, dated December 28, 2000.)

On May 14, 1993, a subpoena was issued by Scott Lutes, defense attorney to FDIC requesting inventories of collateral and non collateral coins held at Eastland Bank, Woonsocket, R.I.

In response to the subpoena, FDIC produced a one page undated EASTLAND SAVINGS BANK, GENERAL INVENTORY OF SAFTEY DEPOSIT BOXES, indicating that 7 separate Safe Deposit Boxes, 960, 853, 946, 16, 606, 849, and 12 contained 6,721 silver dollars instead of 7,826 silver dollars from the possessory collateral. Also that box 945 contained 1,755 silver dollars instead of 2,066 silver dollars. Another box contained currency. *(If FDIC inventory count was exact, the possessory collateral would be short by over 1,100 coins and box 945 would be short some 311 coins prior to and at the time of trial.)*

At trial government represented that the possessory collateral was intact. The Examiner, Michael Weingarten and his employee, Per Baverstam both testified to that affect. Mr. Leidman, government appraiser also testified that the collateral coins for the bank loan were in Woonsocket. See Exhibit H, CR. NO. 96-1187, Brief of Appellant, June 14, 1996 pages 16-17.

Subsequent to his criminal conviction of a false statement to an FDIC insured institution, on May 26, 1993, Petitioner discovered several items which, according to his trial attorney, Scott Lutes, if known at the time of trial, would have radically altered the theory of defense and may very well have resulted in an acquittal. One of these items was a transcript of the removal of the assets of the estate under the direction of John F. Cullen. (See Exhibit H), CR. NO. 96-1187, Brief of Appellant, June 14, 1996.

The 8/18/93 entry by Barbara Quinn, FDIC is whited out. The 8/17/93 entry states that arrangements have been made to relocate the contents of the vault located at 1000 Park Avenue, Cranston, RI to 25 Cummings Way, Woonsocket, RI. The inventory will be moved to the vault on the 2nd floor of the building at Cummings Way...FBI Agent (redacted) will also be on hand to oversee the move. (FDIC FOIA, 12/28/00.)

"8. ...Nine hundred fifty-three (953) possessory collateral coins that were held up until August 18, 1993, in Cranston had been moved earlier to Cranston from the collateral in Woonsocket by the bankruptcy examiners, Mike Weingarten and Per Baverstam, in order to test the value of the collateral by having them examined and graded....On August 18, 1993, these 953 collateral coins were returned to Woonsocket." Aff. Truslow 11/8/95.

The Truslow affidavit is contrary to all trial testimony, stating the possessory collateral was intact at Eastland Bank in Woonsocket prior to trial in May 1993.

The 8/15 Inventory (undated as to year, upon information and belief is August, 15, 1993.) It indicates that 1,113 silver dollars from the possessory collateral was located at Eastland Bank in Cranston. **The 8/15/93 inventory shows the possessory collateral as co-mingled**

prior to trial. Note: 1,113 coins is 160 coins more than the 953 coins sworn to by Agent Truslow in his 11/8/95 Affidavit. With 1,113 coins at Cranston and 6,877 coins from the possessory collateral at Eastland Bank, for a total of 7,990 coins instead of 7,826 coins. (See EXHIBIT B-5.)

On September 30, 1993, Frank Cadigan, attorney for FDIC sent letter to Mr. Lutes stating,

> "The items used as evidence in your client's criminal case have been segregated and is under FBI seal. These items have not been inventoried or appraised by the FDIC and we have no plans to appraise these items."

On October 13, 1993, letter from John Brophy, FDIC to Dennis Jenkins, Probation Officer states, "None of the collateral has been liquidated....."

On December 10, 1993, FDIC MEMO TO TINA L. BEAUCHEMIN:

"We were previously under the impression that the coin inventory list produced to criminal defense by subpoena was composed by the account officer at the closing of NESB (Don Etnier) from an original document in a safe deposit box; that Don just extracted coin inventory and grading info from the original list and produced a clean copy for the closing records.

It now appears that this is NOT the case. We finally got in touch directly with Don and he advises that HE created the inventory and graded the coins.

I have asked Don to contact Assistant U.S. Attorney Sy Posner in Providence without delay, and have confirmed that Don has called Sy (... that Sy can avoid submitting an erroneous motion to the Court.)

UPDATE

Don has now advised us that he has talked with the prosecutor (AUSA Sy Posner) and corrected the earlier data....."(FOIA Dec. 28, 2000, FDIC.)

On December 13, 1993, Government Memorandum, in response to Mr. Lutes questioning the possessory collateral being intact, states that when Mr. Etnier, took the inventory at Eastland Bank with another employee of FDIC, that he did only an approximate count in 2-3 hours and that he could easily have been off by 1100 coins or so.(*Yet it was a not a he that took the count, and a video of this probably exists and is in the possession of Jason Monzack.)*

Newly discovered: Fredrick Fishe, attorney for FDIC, FOIA Section indicated to Petitioner that the count was supposed to be exact when the assets of a bank are taken over.

On March 18, 1994, discussion between Monzack and Lutes about availability of inventory records, according to October 9, 2007 billing.

Attempts by Petitioner and others to obtain copies of seized corporate inventory records, including yellow inventory notebooks, and an accounting of the assets and other discovery from parties in the bankruptcy case were mostly denied. The court upheld the trustee's objection of April 26, 1994, where John F. Cullen, filed an objection to providing an accounting of estate assets. (See Exhibit I.) In this motion on page 4, Mr. Cullen states of records to G.J. on 2/14/91:

> "When the Movant speaks to video tapes or other reports, again he is vague and knows full well that those items, if any, are in the possession of the United States Grand Jury."

At a Hearing in the bankruptcy court on October 4, 2007, Mr. Cullen reiterates that boxes containing videotapes were given to the Grand Jury.

The Billing Records of John F. Cullen, dated October 26, 2007, do not show any involvement with the Grand Jury on February 14, 1991, or that Mr. Cullen, Mr. Blais and Mr. Daugherty of Eastland Bank were at 141 Main St. Woonsocket with Petitioner and removed the yellow notebooks and other records on either Aug. 15 or Aug. 16, 1990. However, the October 26, 2007, billing records do show that Mr. Cullen was in the possession of the videotapes, and stenographic copy of the removal of the assets from CIC on August 17, 1990. Yet, in Exhibit I, on page 1, Trustee Cullen states that the motion is "vague,. . . and that all records directly related to all items in the possession of the Chapter 11 Trustee were available for inspection and have been inspected on numerous occasions." Mr. Cullen then states:

> "The Movant, although alleging that there are questions concerning the whereabouts of certain

valuable items which were allegedly in the possession of the Chapter 11, Trustee, does not give any details as to what items are allegedly missing or what items were originally on the premises in 1990 that are not currently available."

On May 9, 1994, Monzack discussion with FDIC for OK to release inventory to Chorney. (Source: October 9, 2007, Billing.)

On May 26, 1994, Mr. Monzack, in a letter states that FDIC has authorized him to disclose a 14 page inventory list previously supplied to him by the FDIC. (See Exhibit I-1.) This inventory list was produced one year after Petitioner was convicted. (See paragraph 15 above, where FDIC produces only a one page listing.)

The billing of October 9, 2007, indicates that there was no billing for May 26, 1994. However, on May 25, 1994, Monzack dictates correspondence as to what he classifies as "what assets may be unaccounted for and what documents are in the possession of the U.S. Attorney's office."

On June 8, 1994, comment: Postal Inspector had inventories no one knows where they are now, according to October 9, 2007, Billing.

On June 10, 1994, Petitioner sent to Mr. Monzack a listing of assets believed to be missing or unaccounted for from memory. (See Exhibit J.) On September 1994, a follow up letter to the June 1994 letter, concerning assets unaccounted for and missing assets was sent to Mr. Monzack. (See Exhibit K.) A copy of the June and

September correspondence was sent to the Clerk of Courts to go into Petitioner's case file (See Exhibit L.), and other copies were sent to the U.S. Trustee in Providence(See Exhibit M.), and the U.S. Trustee in Boston (See Exhibit N). Petitioner supplied Mr. Monzack with a copy of a transcript of the removal of the assets, a post trial discovery obtained through the efforts of Petitioner, indicating that the assets Petitioner claimed were missing in June 1994 were on the premises when Mr. Cullen, the then Chapter 11 Trustee, removed them in 1990.

On July 12, 1994, Monzack requested appraisals from Joseph DiOrio, Esq. representing Fleet National Bank, successor to Eastland Bank, according to October 9, 2007, Billing.

NEWLY DISCOVERED: This is the first indication to Petitioner that Fleet National Bank had conducted any appraisals.

On or about August 1994, Petitioner had obtained, on his own from Allied Court Reporters, a transcript of the removal of the Cumberland Investment Corporation assets by Mr. Cullen on August 17, 1990. The transcript that the removal of the assets was conducted "in the context of both civil and criminal investigations. TR 8/17/90, pg. 3.

On September 13, 1994, a copy of the Allied Court Reporters transcript of the removal of the assets was sent to Jason Monzack, with a letter.

On December 28, 1994, Mr. Monzack held a meeting at his office in Cranston, Rhode Island. It was at this meeting that he admitted that over $300,000 in assets was indeed missing. (See Exhibit O), the Nacu Letter and Attachments.) and (See Exhibit P.)response from the Office of Professional Responsibility.

Sometime after the December 1994 meeting, Judge Votolato ordered Mr. Monzack to obtain missing documents and other items for Mr. Taft. Mr. Taft was a shareholder of Wescap, the parent company of Cumberland. He was also a client of Cumberland Investment Corporation. His assets were removed by Mr. Cullen in 1990, and were missing. As a result of Mr. Taft complaining about his missing assets, a letter was issued by Mr. Monzack on May 17, 1995, to various parties involved in the bankruptcy case concerned with finding different documents and videotapes. (See Exhibit Q.)

January 12, 1995, Brief of Appellee, "1. The prosecutor asked the bankruptcy trustee (private attorney John F. Cullen) for any videotapes, and gave defendant the only videotape that Mr. Cullen produced."

January 19, 1995, Amended Brief of Appellee, "The videotapes were made solely at the direction of the bankruptcy trustee, John F. Cullen....Defense counsel claims he "was orally informed that this tape constituted the only videotape of which the Trustee or anyone on his behalf were aware" (Br. 26)..."on or about January 15, 1993, AUSA Seymour, in the presence of FBI Special Agent John Tuslow, telephoned defense counsel Scott Lutes and told him that a paralegal at Eastland's private law firm had just provided several additional videotapes that he trustee had made regarding the coins seized from

Cumberland. Pg 26, Mr. Lutes did not take advantage of this opportunity. Should defendant file a new trial claim, AUSA Posner and Agent (sic) Lutes are prepared to give affidavits to this effect." Pg 26.

> "On April 21, 1995, the possessory collateral now belonging to FDIC was removed from the bank premises in Woonsocket to FBI premises by myself and two other employees of the FBI, at my direction. I had the collateral removed for security purposes in order to do a physical inventory of the collateral....." Aff. Agent Truslow 11/8/95.

May 15, 1995, **missing section in billing, on page no 11. Sequence would suggest that Christina DeCellio from the Monzack's office** witnessed a physical inventory by the FDIC, and/or FBI Agent Truslow, which may have included the possessory collateral, according to October 9, 2007, Billing. Possible that something here contradicts par. 39 above.

May 17, 1995, Monzack drafts letters to Chapter 11 Trustee, AUSA, Fleet, Examiner, Postal Inspector and FBI concerning documenting the chain of custody of Debtor's assets, according to October 9, 2007 Billing.

May 17, 1995, Monzack drafts letter to FBI agent Truslow concerning assets in his possession, according to October 9, 2007 Billing.

May 17, 1995, letter, the U.S. Attorney's office notified Mr. Monzack concerning some video tapes and that a viewing of these tapes in the U.S. Attorney's office would be arranged and that Mr. Taft could bring counsel.

On June 7, 1995, Mr. Monzack is told by AUSA Posner that he cannot locate the yellow notebooks, the inventory records of Cumberland Investment Corporation. (See Exhibit Q-1, Billing of Jason Monzack, dated October 9, 2007.)

On June 14, 1995, the redemption client coins of John D'Angelo, seized by the Examiner on August 17, 1990 and subsequently opened, were inventoried and appraised by Robert Moffatt. One of the rolls listed under bearer number 5143 should have contained 20 coins dated 1880-S. Instead Mr. D'Angelo's roll now contained 17 coins dated 1880-S and 3 coins dated 1887. The coins sold to Mr. D'Angelo were sealed in the presence of Mr. D'Angelo, Mr. Timmons and Petitioner at the date of purchase.

On July 21, 1995, Mr. Taft received a letter from Mr. Monzack stating that Mr. Posner will cancel any meeting to view documents an or videotapes should anyone attend meeting at U.S. Attorney's Office who has represented Mr. Chorney in his pending criminal matter. (See Exhibit Q-2.)

On August 11, 1995, Mr. Taft attends meeting at the U.S. Attorney's office in Providence, R.I. The only items produced by A.U.S.A. Posner were of videotapes of the August 17, 1990 and August 23, 1990, removal of the assets from Cumberland Investment Corporation.

Despite all these parties allegedly looking for documents and videotapes, no other party produced another single item requested by Mr. Taft.

On November 8, 1995, government files an objection to Petitioner's Motion for a New Trial. Attached is the Affidavit of Agent Truslow, dated 11/8/95. It states that he is thoroughly familiar with records from case, including those subpoenaed by the Grand Jury from Eastland Bank, John Cullen, U.S. Trustee in Bankruptcy, various banks in the state of R.I. Yet on page 3, Agent Truslow admits that, "This is the first I learned of the existence of such stenographic records."

Mr. Truslow, states that the yellow notebooks "have been available to defendant in the United States Attorney's office since the CIC records were obtained from the United States Trustee." (See EXHIBIT R, page 4.)

Although the objection, signed by A.U.S.A. Posner states, on page 5 that, "Neither the prosecutor nor Agent Truslow was aware until defendant filed his motion for a new trial that a stenographic transcript had been made of the removal of the CIC assets on August 17, 1990." Nevertheless, part of Mr. Posner's conclusion in his Memorandum, pg. 25, was, "The videotapes, the stenographic transcripts, and the still pictures which defendant claims were unknown and unavailable to him at the time of trial were in fact known to him and available to him before trial, particularly the videotapes."

On January 4, 1996, a Hearing was held concerning a Joint Petition for Instructions concerning the Notice of Intended Sale filed by Jason Monzack Trustee and Frank Cadigan, Attorney for F.D.I.C. Mr. Monzack made representations that, .. "We have a detailed inventory from Christie's by year and mint mark as to every coin that they have." TR pg. 15. At this hearing Phil Dunleavy, creditor, objected to the sale of the 8,600 silver dollars because the inventories of the coins shipped to Christies did not match the inventories that were made by Ramapo Coin Exchange only one year earlier. TR pg. 31.

On January 12, 1996, the Affidavit of Agent Truslow, FBI indicates that 953 coins from the possessory collateral moved to Cambridge, MA for grading purposes were then moved to Eastland Bank in Cranston, R.I.

On February 12, 1996, newly discovered, a **61 coin appraisal discrepancy** according to Frank Cadigan, FDIC. "Christies does show 61 more coins than Ramapo...." Billing Oct.9, 07.

The Affidavit of Theresa Ryan Tosches, FDIC dated February 13, 1996 indicates in paragraph 4. That "In totaling up the number of silver dollars listed in the RAMAPO appraisal against the total number of silver dollars listed in Spink America manuscripts, there is a 14 coin discrepancy. It appears at this time that Spink America is showing 14 additional coins in its inventory."

On February 15, 1996, a Hearing was held. Mr. Taft presented evidence that the coins offered for sale by Christies contained major inconsistencies with the coins inventoried by Ramapo. The FDIC admitted that there was a 14 coin count difference. TR. pg. 87. Rather than the court demanding that the inventories be reconciled prior to any auction, the sale was approved over the objection of Mr. Taft and others. Even though Monzack and FDIC compiled a list prior to shipping the coins, the only list available to Mr. Brodsky and Mr. Taft is the list of coins in the possession of Christies according to Christies auction lists. MR. MONZACK: .... "We gave Mr. Taft the complete list of coins in the possession of Christie's. That's what he uses the basis for his objection he filed with the Court. Nobody's trying to hide anything from anyone." See TR pg. 71.

At the February 15, 1996 Hearing, Mr. Monzack represented that, "nobody knows if the coins that were originally in there were matched up with the description." TR pg. 17. This is not true. Mr. D'Angelo's coins were sealed in the presence of Mr. Timmons, Mr. Duggan, Mr. Cadoret and Petitioner. (See par. #45 above.) Upon information and belief, there were many CIC clients, whose coins were sealed in the presence of multiple parties.

At the February 15, 1996 Hearing, Mr. Monzack states, "....so-called yellow pad that admittedly was in the hands of the U.S. Attorney at one point, and the U.S. Attorney can't find it anymore. That's part of—of—we went over there and met with the U.S. Attorney, and probably Mr. Lutes is more familiar with that than I am, but there are certain documents that existed that were in the possession of, for instance, the U.S. Attorney. ....I'm told—it's all hearsay, but I'm told that this yellow pad that Mr. Chorney had was at one time in the possession of the U.S. Attorney and at the present time they have been unable to locate it." THE COURT: Yeah, but do they acknowledge that they ever had it? MR. MONZACK: I think they do." TR pg. 18. The Truslow

Affidavit of November 8, 1995 in paragraph 49 above is contradictory to the fact that the yellow notebooks were not available in response to the May 17, 1995 letter from Monzack, in par. 36 above and contradictory to par. 44 above.

At the February 15, 1996 Hearing Mr. Monzack states, "We have a list that was done jointly by myself and FDIC before we let Christies take the coins." TR pg. 68

At the February 15, 1996 Hearing Attorney Brodsky, Special Master appointed by Superior Court in R.I. appeared to oversee Mr. Smith's cases. Mr. Brodsky states that he "had on two occasions had to prod FDIC for a list of names with corresponding bearer number, never got the response from Mr. Monzack when I wrote to him during this interval between January 4 and today." TR pg 27.

On February 23, 1996, Petitioner goes to prison.

On March 25, 1996, Mr. Monzack sends a FAX to the U.S. Attorney, Seymour Posner requesting an inventory of the records of Cumberland Investment Corporation. Monzack references a March 11, 1996 letter from Mr. Posner.

On March 26, 1996, Mr. Monzack sends another FAX to Mr. Posner concerning picking up the records on April 5, 1996.

On March 26, 1996, Mr. Monzack sends another FAX to Mr. Lutes, Attorney for Petitioner, asking Mr. Lutes if he wants the records.

On various dates in April 1996, attempts are made by Mr. Lutes, Mr. Searles and others to pick up the records from Mr. Monzack. There is no meeting to pick up the records after numerous attempts.

On April 18, 1996, Monzack meets with *someone for 4.5 hours* (source, Oct 9, 2007, billing.)

On May 2, 1996, Monzack talks with Cadigan, FDIC, re: indemnification of Trustee by FDIC, with limit of $1,500,000 in the sale of silver dollars. Source, October 9, 2007, Billing records.

On May 20, 1996, Mr. Lutes requests a list of the coins (as stated on page 68 of the February 15, 1996 hearing) that Monzack and Cadigan had inventoried prior to shipping them to Christies. Mr. Monzack did not respond.

May 24, 1996, A.U.S.A. Posner receives records from Postal Inspector. Source, October 9, 2007, Billing records.

On June 14, 1996, Petitioner, through his attorney Scott Lutes filed Brief of the Appellant, an appeal from a denial of a Motion for New Trial upon the grounds of newly discovered evidence. (See Exhibit H.)

The government had objected to the appeal in District Court in Case No. 92-099P. The GOVERNMENT'S MEMORANDUM OF LAW IN SUPPORT OF ITS OBJECTION TO DEFENDANT'S MOTION FOR NEW TRIAL states: "Defendant argues that he sent a letter to the prosecutor on January 5, 1993 seeking videotapes of August 17, 1990.... . The prosecutor was unaware of any videotapes at the time the letter was sent." Pg. 3

> "Bear in mind that the possessory collateral held by and in the bank was never part of the assets removed by the Trustee on August 17, 1990. Those coins were in the bank vault and with the exception of coins they were removed to the Cranston office of the bank by the Examiner for testing and grading purposes and later returned to the bank vault in Woonsocket, the possessory collateral was never in the care, custody or control of the United States Trustee." Pg 13.

"In addition, representatives of the FDIC inventoried the bank's collateral on January 27, 28, and February 4, 1993. . . The FDIC inventory did not contain the coins that were auctioned off by Christies and Bowers & Merena, Inc. ..long before the FDIC inventoried CIC's assets." Pgs.20-22.

(Par. 13 above indicates an inventory on 1/14/93, unless others were done.)

June 20, 1996, Monzack meeting with computer expert Peter Lawson re: retrieving information on computer disk provided by U.S. Postal Inspector via Sy Posner at U.S. Attorney's Office. Source, October 9, 2007, Billing records.

July 5, 1996, records from Postal Inspector contain names, addresses and bearer numbers of redemption coin clients given to Irving Brodsky, special master.

(Petitioner was accused of concealing these records by the Examiner and others.) Source, October 9, 2007, Billing records.

On July 25, 1996, Mr. Lutes made additional requests to pick up the records and a second reminder concerning the list of coins made by Monzack and Cadigan. Mr. Monzack did not respond to this letter either.

On September 1, 1996, Petitioner requested an accounting of the assets from Mr. Monzack. Mr. Monzack did not respond to this letter.

November 19, 1996, Christies coin appraiser, Russell Kaye, backs out of purchase of miscellaneous items at private sale. Source, October 9, 2007, Billing records.

On October 17, 1998, Petitioner sent a letter to Mr. Monzack concerning pickup of the records in his possession. This letter was never answered.

On November 23, 1998, Trustee Monzack filed a STATUS REPORT that states, "Additional coins which were held by the U.S. Attorney regarding the criminal prosecution of Harold Chorney are now being prepared for turnover to the Chapter 7 Trustee for their sale at auction, pursuant to an agreement with the FDIC whereby the bankruptcy estate would sell the coins and share in the proceeds upon the same terms and conditions as the previous sales. Pursuant to previous discussions with Frank Cadigan of the FDIC it is expected that the remaining coins would be turned over to the Chapter 7 Trustee within the next thirty (30) days.

On December 4, 1998, Mr. Lutes sent a letter to Mr. Monzack concerning pickup of the records in his possession. This letter was never answered.

On January 8, 1999, Agent Truslow receipts coins and currency to Frank Cadigan at FDIC. The receipt shows two listings of silver dollars, one for 7,809 U.S. Silver Dollars and a second for 183 Silver Dollars. Mr. Monzack gave Petitioner this receipt subsequent to bankruptcy court hearing April 6, 2000. Mr. Taft and Petitioner questioned the number of silver dollars from possessory collateral, which supposed to have contained 7,826 silver dollars in proposed sale, instead of the 7,992 number of silver dollars listed for sale. (See par. 21 above.)

On August 27, 1999, Trustee Monzack filed a STATUS REPORT that states, "Coins which were held by the U.S. Attorney regarding criminal prosecution of Harold Chorney have been turned over to the Chapter 7 Trustee for their sale at auction. Coins are presently held by Christies/Spink's in New York and are being prepared for sale at auction subject to terms to be agreed upon by FDIC and subject to approval of the Bankruptcy Court. Upon sale of the remaining coins Trustee's Final Report and Account Before Distribution will be prepared. Expect sale at Christies/Spinks next major sale of coins which is Dec. 1999. Projected date for filing TFR: 1/00-3/00.

On October 19, 1999, subsequent to serving 19 months in Federal Prison, Petitioner obtained 19 videotapes, each two hours long, of the removal of the assets on August 17, 1990 and August 23, 1990, from the Executive Office of U. S. Attorneys (EOUSA). These videotapes, which corroborate the transcript of the removal of the assets on August 17, 1990 and confirm different items that Petitioner claimed were missing were indeed there on the premises when the Trustee removed them. Videos were specifically requested prior to trial and not produced.

On October 29, 1999, Jason Monzack filed a MOTION FOR ORDER AUTHORIZING SALE NOTICE FOR APPROXIMATELY 7,491 SILVER DOLLARS (the collateral coins.) This is 501 coins less than the aggregate of the 7,809 and 183 silver dollars.

On November 17, 1999, Mr. Taft objected to the sale stating that the sale had not been in any numismatic publications and since he had not seen any catalog, he could not tell if the coins were being offered in large group lots in a commercially unreasonable manner or not.

On December 1, 1999, just six days prior to the sale, there is a court hearing. Taft indicates to the court that he does not want to stop the sale, but he is concerned on how the items are being cataloged for sale and that the items are being grouped together and that this may not be a "commercially reasonable" sale. The court overrules Taft's objection and orders the sale to continue.

On December 3, 1999, Petitioner receives copy of auction catalog.

On December 7, 1999, the auction contains 8,004 silver dollars and not 7,491 silver dollars according to the auction catalog. This is 12 more than the 7,992 and 513 more than the 7,491 silver dollars.

On December 14, 1999, Frank Cadigan of FDIC states that "I talked to FBI agent John Truslow in Providence. All records connected with Cumberland Investment, including video tapes, inventory lists and everything Chorney is seeking is with the Office of the United States Attorney at 50 Kennedy Plaza, Providence, RI. We have none of that stuff. Some video tapes are with Hinkley Allen in Providence. Jason Monzack may have some video tapes of inventories we did after the bank closed but FDIC has nothing." (Response to FOIA to FDIC, Dec. 2000.)

On March 9, 2000, Warren Taft files MOTION TO COMPEL TRUSTEE TO PROVIDE ACCOUNTING OF ESTATE PROPERTY SOLD ON 12/7/99 AND REQUEST FOR CLARIFICATION as to why the sale contained some 8,000 silver dollars instead of 7,491 silver dollars.

On March 14, 2000, the FDIC files a RESPONSE BY FDIC TO PETITIONER'S REQUEST FOR CLARIFICATION AND ACCOUNTING OF ESTATE PROPERTY SOLD ON DECEMBER 7, 1999 BY SPINK AMERICA.

On April 3, 2000, Warren Taft seeks a Continuance of the Hearing Scheduled for April 6, 2000 since more questions are being raised than answered in RESPONSE OF CHAPTER 7 TRUSTEE TO PETITIONER'S REQUEST FOR CLARIFICATION AND ACCOUNTING OF ESTATE PROPERTY SOLD ON DECEMBER 7, 1999. In addition, Mr. Taft was seeking to obtain a copy of the inventory performed by Mr. Cadigan and Mr. Monzack prior to the coins being shipped to Christies as stated on page 68 of the Transcript of the February 15, 1996 Hearing.

On April 6, 2000, there is a Hearing concerning an accounting of the assets sold on December 7, 1999. As a result of this hearing, Mr. Taft did not get any explanation as to why there were 8,004 coins in the December 7, 1999 sale, nor did he get any breakdown of the 1128 silver dollars. The 1128 silver dollars were grouped in a manner so that a reconciliation of the inventory could not be done. See TR pg. 8.

NOTE: Silver dollars are not of equal value. It is possible to have 500 coins that are valued at $10.00 each as Christies evaluated the 1128 coins, be worth less that just one silver dollar like an 1896-0 that was missing from the inventory of Cumberland Investment Corporation.

On April 6, 2000, Mr. Monzack states,

> "...a third group of coins was that group of coins that were separately segregated at the insistence of Eastland Bank when they had some doubts about the financial stability of Cumberland Investment,

> and it was set aside in a separate vault taken control of by the U.S. Attorney's office. That group of coins that were shipped directly to Christies." Tr. Page 12 of April 6, 2000. See paragraph 4, above.

At the April 6, 2000 Hearing Mr. Taft states that Mr. Monzack does not respond to his letters. "He could have--we wouldn't even be in court. I asked him to just send me some documentation in January, we wouldn't be wasting the Court's time at this point. Unless he wants to send me a letter saying I'm not going to do anymore, if he wants to, that's fine, and I won't bother him anymore, Your Honor." Basically, the court found that Mr. Monzack had clarified Mr. Taft's questions and would give Mr. Taft the response from Christies when he got it. TR. pg. 15.

On April 20, 2000, after receiving a copy of the transcript of April 6, Warren Taft writes to Jason Monzack concerning the assets in the December 7, 1999 sale. Mr. Monzack did not reply.

On May 23, 2000, Mr. Burgess of F.D.I.C. indicates to Petitioner that Mr. Monzack may have videotapes of the appraisals conducted when Eastland failed.

If Mr. Monzack, who was the receiver for Eastland Bank as well as the Chapter 7, Trustee in the Cumberland Bankruptcy case, has the videotapes in his possession, Eastland Bank and their successors FDIC, who accused Petitioner of a crime that he was convicted of, are the same parties that withheld evidence concerning the alleged crime itself in order to cover up the fact that some assets of Cumberland that were stored at Eastland as collateral, were missing or tampered with.

On June 7, 2000, Mr. Taft wrote to Mr. Monzack concerning the assets of the estate in the December 7, 1999 sale. Mr. Monzack did not respond.

On June 12, 2000, Petitioner was the sole sworn witness at a hearing. Petitioner asked the Trustee about whether or not he had videotapes of the assets of Eastland Bank being inventoried when the bank failed. **Judge Votolato stated that Petitioner could raise those issues at another time.** Mr. Monzack indicated that when the criminal matter was over the U.S. Attorney gave him the records and videotapes concerning Cumberland Investment Corporation.

On July 3, 2000, Mr. Monzack filed MOTION TO STRIKE MOTION TO COMPEL CHAPTER 7 TRUSTEE TO PROVIDE ACCOUNTING OF ASSETS AND TO PRODUCE REQUESTED DOCUMENTS AND VIDEOTAPES.

On July 14, 2000, Petitioner sent a letter to Mr. Monzack requesting a time to get together to go through the records in Mr. Monzack's possession in order to locate documents that Mr. Monzack requested at the July 6, 2000 Hearing.

On September 8, 2000, the court issued an order denying as moot Petitioner's MOTION TO COMPEL CHAPTER 7 TRUSTEE TO PROVIDE ACCOUNTING OF ASSETS AND TO PRODUCE REQUESTED DOCUMENTS AND VIDEOTAPES.

On February 6, 2002, Mr. Monzack signs for FIRST REQUEST FOR ADMISSIONS by Petitioner.

On February 7, 2002, Mr. Monzack at a hearing stated that there were actually 20 videotapes and not 19.

On November 14, 2003, A STATUS REPORT, docket #759, was issued by the Chapter 7 Trustee, Jason Monzack stating,

> "The trustee has not received notification from the U.S. Supreme Court regarding its disposition of Chorney's petition for Writ of Certiorari. All funds to be paid to secured creditors have been disbursed. There remains $258,108.27 to be disbursed to unsecured creditors and for administrative expenses. The Trustee expects that disputes regarding claims will be resolved within the next sixty (60) days and this case may be closed within six (6) months, provided that there are no legal proceedings pending in the U.S. Supreme Court."

At a Hearing dated February 24, 2004, Jason Monzack reported to the court that certiorari in the Supreme Court case was denied and that there was a settlement in a class action lawsuit against Sotheby's and Christies six months ago and that subsequent to a submission of a claim, $11,000 was awarded to the estate as well as a certificate usable up to May 2007, and that this was the last asset in the estate.

On March 8, 2004, Petitioner filed a MOTION AND MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION TO CLARIFY THE CLASS ACTION AWARD

FROM THE LAWSUIT AGAINST CHRISTIES AND SOTHEBYS AND REQUEST CHAPTER 7 TRUSTEE PROVIDE A COMPLETE AND DETAILED ACCOUNTING OF ESTATE ASSETS.

At March 18, 2004, Hearing, Judge Votolato asked Mr. Monzack, "Are you looking into the standing of Mr. Chorney to file such motions at this point?" The Judge then asked Mr. Monzack when he was going to object to Petitioner's motions and was told by Mr. Monzack that day or the following day.

On March 19, 2004, MOTION TO STRIKE MOTION TO CLARIFY CLASS ACTION AWARD, by Trustee Monzack.

On April 9, 2004, Petitioner filed MOTION AND MEMORANDUM IN SUPPORT OF MOTION IN OBJECTION TO MOTION TO STRIKE BY THE CHAPTER 7 TRUSTEE, JASON D. MONZACK

On April 30, 2004, a SECOND REQUEST FOR ADMISSIONS was sent by Petitioner to Mr. Monzack. (See Exhibit S.)

On May 7, 2004, the Trustee filed a MOTION TO STRIKE SECOND REQUEST FOR ADMISSIONS.

At a May 13, 2004, Hearing Petitioner was prepared to call Mr. Monzack to the witness stand and present documents to him concerning the REQUEST FOR ADMISSIONS, but was unable to do so. At the Hearing, while Petitioner was on the witness stand:

CHORNEY: "..but the jurisdiction that you do have, your honor, is over the trustee to respond to Request for Admissions concerning these assets....."

COURT: "Not from you, not from you sir...and I'm referring you to the proper authorities"

On July 28, 2004, MOTION TO STRIKE SECOND REQUEST FOR ADMISSIONS is filed by Trustee.

On November 3, 2004, court grants MOTION TO STRIKE CLARIFICATION OF LAWSUIT AGAINST CHRISTIES & SOTHEBYS and grants MOTION TO STRIKE SECOND REQUEST FOR ADMISSIONS.

Additionally, Petitioner is sanctioned:

> "EFFECTIVE IMMEDIATELY, THE CLERK OF COURT SHALL DECLINE TO ACCEPT ANY FILINGS FROM HAROLD CHORNEY, UNLESS SUCH FILING HAS FIRST BEEN PRESENTED TO CHAMBERS AND IS SPECIFICALLY AUTHORIZED BY THE COURT FOR FILING."

On July 26, 2007, Petitioner received a 38 page document, FIRST AND FINAL APPLICATION FOR FEES AND EXPENSES OF EDWARDS ANGELL PALMER & DODGE LLP. (See Exhibit B.)

This document states that,

> "EAPD is not seeking payment for $35,921.36 in fees for services rendered to the Trustee during the period August 30, 1991 through December 22, 1993 because, due to a glitch in transferring data to a

new computer, EAPD cannot recover the data as to individual time entries for that period, although the computer does show the data to the aggregate amount of fees for said period."

Mr. Monzack testified at 9/6/07 Status Hearing that he was waiting for the professionals to file their billings. When queried by the court about the professionals, Mr. Monzack said, [1]

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[1] Mr. Monzack has testified at several hearings concerning completion of The Final Report. On August 27, 1999, he said, "Projected date for filing TFR: 1/00 3/00." On February 7, 2007, Mr. Monzack stated that he would have The Final Report in two weeks. For one reason after another Jason Monzack, the Chapter 7 Trustee, on the Cumberland case, with approval of the court and apparently with the blessings of the U.S. Trustee's Office, continued not to present the required submission of the Trustee's Final Report. It goes back a lot further, but check this pattern over the last two years back on May 2005, according to Docket #904, dated 05/31/2005, "Notice to Trustee re: Case's Appearance on 6 month Inactivity Report Status Check Due by : 6/30/2005 followed by Docket #907, an Order Requesting Updated Status Report, dated 7/7/05. Subsequent to the Trustee's unsuccessful attempt to collect the $200,000.00 contempt of court fine against Chorney, Docket #919 states, Notice to Trustee re: Case's Appearance on 6 month Inactivity Report Status Check Due by: 9/25/2006.

Despite continuous case inactivity, The Final Report to close this case was never filed. For instance Docket #922, is an ORDER FOR UPDATED STATUS REPORT, dated 10/2/06, from the Court which states, "... Jason D. Monzack, is hereby ORDERED to submit an updated status report and is also hereby ORDERED to file said report no later than 11/1/2006 with proper certification to all interested parties."

"Mr. Bertozzi, is revising his billing, and Mr. Cullen is on the verge of filing." (Mr. Cullen has not been a Trustee on this case since December 22, 1993, when replaced by Mr. Monzack.) The Judge continued the hearing until October 4, 2007, and said to Mr. Monzack to file the final report regardless of receiving the Bertozzi or Cullen billings.

Upon information and belief, the only parties, who Petitioner saw present at this hearing other than himself were attorneys Monzack, Chapter 7 Trustee; John Boyajian, representing Cumberland Investment Corporation; and Matthew McGowan, representing the Creditors' Committee.

No one other than Mr. Monzack testified.

On October 26, 2007, Petitioner obtained a copy of FINAL APPLICATION OF FORMER CHAPTER 11 TRUSTEE, JOHN F. CULLEN FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSE from his Pacer account. This billing shows that Mr. Cullen "utilized three video and still photographers, as well as a stenographer, each of whom assisted the Trustee in keeping detailed records Memorializing the transfer of estate assets."

"The Applicant also coordinated two other transfers of estate assets in the same manner above-described." (This paragraph is newly discovered. No video or transcript of other transfers have ever been produced.)

On October 29, 2007, Petitioner discovers that the Billing of Mr. Cullen on October 26, 2007 does not match the billing of Mr. Cullen on Sept. 26, 1991. (See EXHIBITS T, U & V.)

DISCUSSION:

CIVIL AND CRIMINAL CASES INTER-RELATED

On or about August 1994, Petitioner had obtained, on his own from Allied Court Reporters, a transcript of a warrantless search, involving the removal of the Cumberland Investment Corporation assets and documents by Mr. Cullen, Chapter 11 Trustee, on August 17, 1990. The transcript stated that the removal of the assets was conducted "in the context of both civil and criminal investigations. TR 8/17/90, pg. 3. Mr. Cullen was represented by Attorney Bertozzi at that time.

At Hearing, January 8, 1992, Judge Votolato stated to Mr. Posner, A.U.S.A. in the presence of Mr. Cullen, "..if you decide, for whatever reasons, that there's no more U.S. Attorney or Grand Jury involvement and we're back to strictly civil, let me know, because then we'll go back to civil--, MR POSNER: Understood." At one point Judge Votolato speaks of modifying a bankruptcy court order saying, "I'll leave the amended language up to the parties, the U.S. Attorney, the Trustee and Mr. Chorney, all right?" TR January 8, 1992, pgs 24-6. (See Exhibit B-4.)

The 10/26/07 "sanitized" Billing just filed by Mr. Cullen, mostly references 10/90 to 12/92, and states Cumberland Farms Investment Corporation instead of Cumberland Investment Corporation. Part B pages E-225 to E-238, has no mention of target of probes or of investigations or meeting with Eastland Bank officials.

However in the 9/26/91 Billing, contemporaneously done during the same time period, there is mention of conferences Re: investigation and target of probe; trips to Washington DC, re: investigation of background and schemes; as well as meetings with U.S. Attorney, Postal Inspector, D.E.A., I.R.S. and Grand Jury and meetings with Eastland Bank officials, executives and chairman of the board. See E-247 to E-255.)

Note: The "missing" Bertozzi Billing, overlaps the same time period. (See paragraph 113 above.)

ADMINISTRATION AND ACCOUNTABILITY OF THE CIC ESTATE

Petitioner and/or his counsel from the onset of the bankruptcy in 1989, has filed motions and appeals concerning the administration of the bankruptcy estate and an accountability of the assets of CIC. One area questioned was the double billing of the estate by the Examiner, Michael Weingarten, who was also represented by Mr. Bertozzi. Discovery was eventually denied by the court, questioning the motives of the Petitioner, subsequent to a showing of the double billing practices of Mr. Weingarten. (See Exhibit B-1.) where the court states, "...let's be blunt and call it a waste of the Court's time, parties, expense to the estate. I was not disappointed......It is my intention right now to terminate Mr. Chorney's participation..from now on he's an alleged general creditor...his standing is nothing more than a general creditor in this case..the Trustee is representing the interest of general creditors in this case..any prior orders that I've signed inconsistent with what I'm saying..are vacated as of right now." This was all followed by a court Order. (See Exhibit C.)

NON PRODUCTION AND SUPRESSION OF DOCUMENTS

Disclosure and production of materials from the Examiner and Chapter 11, Trustee, John F. Cullen were requested for both criminal and bankruptcy matters. Incomplete production occurred in the criminal case, while there was little production of documents requested by Petitioner in the bankruptcy case. Virtually all motions to obtain documents were Denied. Appeals of these motions to the District and First Circuit were then further Denied. The results being that Petitioner lacked the information necessary to present his case.

PETITIONER PLEADS A FRAUD ON THE COURT

Petitioner and others have requested disclosure and production of materials from Mr. Cullen's successor, the Chapter 7 Trustee in Bankruptcy, Jason D. Monzack on several occasions, virtually without success. The corruption of the Bankruptcy Court's impartiality, perpetrated by officers of the court, have resulted in a situation where the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. See **United States v. Zinner**, No. 95-0048, 1998, E.D. Pa. Feb 9, 1998, pages 2-3.

For example, on May 17, 1995, a letter was issued to court officers, governmental agencies and to the other *parties* in the case for the production of documents, virtually without any success. (See EXHIBIT Q.) Despite these requests for videotapes, photographs and yellow notebooks (containing company inventories) sign in and out cards from the bank vaults, no one has produced them, at least not to Mr. Taft or Petitioner. It appears that during the entire process, there seems to be constant doubt in the mind of the court that events and evidence, claimed by Petitioner to be true are indeed true. Finally, at the February 15, 1996, Hearing, the Judge infers the non existence of the records sought, despite Mr. Monzack stating that he believes the records were there. (See Par. 54 above.)

LACK OF DISCOVERY IS OF NO FAULT OF PETITIONER

Petitioner continues to seek documents in both cases. To date he has obtained through efforts of his own, a transcript of the removal of the assets, under the direction of John F. Cullen, performed on 8/17/90.

On October 19, 1999, Petitioner obtained 19 videotapes of the removal of the assets by John F. Cullen on August 17, 1990 and August 23, 1990, through an F.O.I.A., some six years subsequent to his criminal trial, 92-099P, and three years subsequent to the BRIEF OF APPELLANT, An Appeal from a denial of a Motion for New Trial upon the ground of newly discovered evidence in CR NO. 96-1187. In addition, Petitioner filed F.O.I.A.'s to the EOUSA, FBI, EOUST and others.

ARGUMENT:

Both the criminal case and the bankruptcy case are interrelated and replete with examples of non production of materials requested. The non production or lack of acknowledgment of the existence of evidence hamstrings Petitioner in presenting or even preparing his case. The lack of information and evidence prevented counsel for Petitioner from preparing a defense based upon Petitioner's claims of missing, switched and mishandled assets in the criminal case.

The history of failure to disclose or produce materials in discovery can constitute misconduct within the purview of Rule 60(b)(3). See **Anderson v. Cryovac, Inc.**, 862 F2d 910, 923. (1st Cir. 1988.)

"Where one party wrongfully denies another the evidence necessary to establish a fact in dispute, the court must draw the strongest allowable inferences in favor of the aggrieved party." **Anderson v. Cryovac, Inc.** 925.

In this instant case, the misconduct is being conducted by officers of the court, who are failing to disclose or produce materials in discovery so that Petitioner can present his case. Fed.R.Civ.P. 60(b). The Rule requires that motions pursuant to the above grounds

> "shall be made within a reasonable time, and . . . not more than one year after the judgment, order, or proceeding was entered or taken." Id.

At the same time, the Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.

See **Reintjes v. Stoker**, Ca. No. 95-1552, December 13, 1995, 1st Cir. Petitioner avers that the information in paragraphs 1-116 above show that the fraud in the criminal case is "extrinsic" or collateral to the fraud in the bankruptcy action and justify an untimely relief, especially since billing documents in an eighteen year old case are still coming to light. The result of continuous and substantial fraud on the court is that "a wrong to institutions set up to protect and safeguard the public" has and continues to occur.

EXTRINSIC FRAUD IN THE CRIMINAL CASE WAS COLLATERAL TO THE FRAUD IN THE BANKRUPTCY CASE

One fact in dispute, in both cases involving the Petitioner, the bankruptcy case 89-11051 and CR 92-099P, deals with the inventory of the assets in the estate. Contested was the value of the assets of the estate of Cumberland Investment Corporation as well as the content of the assets both prior to and subsequent to Mr. Cullen removing the assets. Petitioner has continuously maintained that there was enough value in the assets to cover all debt of Cumberland Investment Corporation but that something happened to these assets.

Evidence necessary to establish the disputed fact(s) could have been obtained by an accounting of the assets seized, those sold and those remaining or missing at various stages of the bankruptcy. A lengthy history of Petitioner and others, requesting documents and receiving little or no production in the criminal and civil cases are documented, in part, by paragraphs 1-116 listed above. Documents sought in both the civil case and the criminal case concerning an accounting of the assets of the estate were not supplied or even responded to by the Chapter 11 Trustee. Minimal, incomplete, and possibly misleading information was supplied by FDIC, all further complicated by perhaps the perjures information from government.

EXISTENCE OF PERJURY

Either the U.S. Attorney and the FBI Agent or the court officers in the bankruptcy court committed perjury. Regardless as to whether the perjured information comes from court officials in the criminal case, the civil case or both (See paragraphs 11, 17, 20, 21, 23, 76 concerning the collateral intact, or paragraphs 14, 16, 25, 30, 37, 38, 86, 115 concerning production of documents both prior to and subsequent to the criminal trial) the Chapter 7 Trustee, as did his predecessor the Chapter 11 Trustee, continued this pattern of non disclosure in bankruptcy court. In addition it can easily be established that Petitioner and others have been refused these documents. The bankruptcy court ironically refused to give Petitioner documents under the guise of "willful interference with the orderly and economic administration of the estate...".

FRAUD ON THE COURT SUBVERTS THE INTEGRITY OF THE COURT

As troublesome as the Petitioner seeking documents and not receiving any production is the fact that court officials, seeking information on the case also failed to produce the documents sought thus producing a species of fraud which actually subverts the integrity of the court.

On May 17, 1995, Mr. Monzack issued a letter to the parties concerning missing documents, allegedly without any response. (See Exhibit Q.) One document sought was the yellow inventory notebooks. They not only contained lists of redemption coins, but also a detailed list of all of the assets of Cumberland Investment Corporation. Without these specific records, Petitioner could only use memory to indicate which assets of the estate were missing in letters to the Trustee on June and September 1994.(EXHIBITS J & K)

All copies of these CIC records were not available to Petitioner. Copies in the possession of CIC accountant Peter Lockey were taken by the FBI and not returned, and the Trustee in Bankruptcy, claiming ownership, would not allow the accountant firm of Thorne, Earnst & Whinney to produce these documents for Petitioner.

The significance of the disappearance of the "yellow covered notebooks" is that they would indicate that the in-house assets have been tampered with since they were seized by the Trustee in August 17, 1990 and that assets of CIC under custody and control of John Cullen, Trustee and Eastland Bank were missing. Without these yellow notebooks, both cases became reliant upon the production of counts and inventory produced under the direction of FDIC, the Examiner and Trustees in Bankruptcy, Eastland Bank and their successor Fleet Bank versus those conducted under the certified audit conditions of a big eight accountant firm.

This May 17, 1995, letter (See Exhibit Q.) went to the U.S. Attorney, the FBI and other parties involved with both the criminal and the civil aspects of the Cumberland/Chorney cases. Not one party found any of the documents listed, except the videotapes produced by the U.S. Attorney's office.

The recent Monzack Billing of October 9, 2007, entry dated 6/7/95, states, "Telephone discussion with Sy Posner, Esq., he will appear at tomorrow's hearing in Bankruptcy Court **cannot locate yellow notebooks** (emphasis added), does have receipts has videos, some inventories, some sign in and out cards." Yet six months later, the FBI Agent states that these yellow notebook records are at the U.S. Attorney's office in boxes that Defendant failed to see them. See Affidavit of Mr. Truslow, dated November 8, 1995, page 4 where Mr. Truslow states that the yellow notebooks "have been available to defendant in the United States Attorney's office since the CIC records were obtained from the United States Trustee."

ONE CONTRADICTARY STATEMENT AFTER ANOTHER

Back in 1994, Mr. Cullen stated on page 4 of Exhibit I that "When Movant speaks to video tapes or other reports, again he is vague and knows full well that those items, if any, are in the possession of the Grand Jury." As recently as October 4, 2007, Mr. Cullen stated to the Bankruptcy Court that he was going to file a Supplemental Billing for the last two years he was Trustee. In addition he stated that he delivered 100 and possible 200 boxes of documents to the Grand Jury and that these boxes included boxes of videotapes.

Both the 1994 statements and the 2007 statements contradict the Government's Brief of January 19, 1995 at pg 25-6, which states how the videotapes were obtained in the first place.

> "On or about January 15, 1993, AUSA Seymour Posner, in the presence of FBI Special Agent John Truslow, telephoned defense counsel Scott Lutes and told him that a paralegal at Eastland's private law firm had just provided several additional videotapes that the trustee had made regarding the coins seized from Cumberland....." (See paragraphs 37, 38 above.)

The Posner/Truslow rendition can only be fabricated if as Mr. Cullen states that the videotapes were all given to the Grand Jury on or about February 14, 1991 even if Eastland Bank or their successors may have had a second set of videotapes. It appears as if the G.J. and/or the prosecutor may have been mislead when Mr. Cullen on Feb. 14, 1991 testified that, "During the process, we used a photographer, still photographer and a video camera to trace the process of leaving the vault, to the armored cars and then to Marquette." TR. 2/14/91 page 3. When contrasting the information in the October 26, 2007 billing, it shows that Mr. Cullen "utilized three video and still photographers, as well as a stenographer, each of whom assisted the Trustee in keeping detailed records Memorializing the transfer of estate assets."

Either way, it is possible that the second Grand Jury, which indicted Petitioner, never saw or even knew of the existence of all 19 videotapes.

Petitioner could never obtain a chain of custody of these tapes, when requested in an F.O.I.A. with the Executive Office of U.S. Attorneys. The reason for this is either Mr. Cullen lied in that these videotapes were never given to the Grand Jury, or that the FBI and US Attorney lied as to when and how they were acquired.

Either way, if Eastland bank and or their successors FDIC had the videotapes in May 1995, they ignored the bankruptcy court order dated May 17, 1995 asking for (4.) video, photographs, stenographic records....plus.

MORE MISSING INFORMATION:

The detailed billing of EADP's involvement with both the criminal and civil cases concerning Petitioner are conspicuously missing, regardless as to whether the entries are a result of computer glitches or the failure to disclose is the result of an accidental omission or otherwise. See **Nation-Wide Check Corp. v. Forrest Hills Distributors, Inc.** 692 F.2d 214, 217-219 (1st Cir. 1982)(deliberate nonproduction or destruction of relevant document is "evidence that the party which has prevented production did so out of the well-founded fear that the contents would harm him.")

Petitioner avers that discovery material, such as inventories and appraisals, has been deliberately suppressed and has inhibited the unearthing of further admissible evidence adverse to the withholder and that this evidence substantially interfered with trial preparation in both the criminal and civil arenas.

Attorney for Petitioner in the criminal action stated, "The Defendant contends that this information was within the control of the United States Government, that it was improperly withheld from him, that the information constitutes exculpatory evidence and that had the existence of this information been known prior to trial much more attention would have been paid by Counsel to client's claim that the assets of his company had been altered, switched or mishandled."

According to **Commercial Ins. Co. v. Gonzalez**, 512 F2d. 1307, 1314 (1^{st} Cir.)as stated in **Anderson v. Cryovac, Inc.** pg. 925, "It seems equally logical that where discovery material is deliberately suppressed, its absence can be presumed to have inhibited the unearthing of further admissible evidence adverse to the withholder, that is to have substantially interfered with the aggrieved party's trial preparation." For instance, Videotape #2, once in the possession of Mr. Cullen and then allegedly in the possession of the FBI and U.S. Attorney would have had a substantial influence on the jury during the criminal trial.

When the "non possessory" assets were being removed from Petitioner's store at 325 Main Street, Woonsocket to Eastland Bank in Cranston, Mr. Weingarten was asked the value of the silver dollars on one of the armored trucks. Mr. Weingarten's response, recorded on videotape, "two to three million." August 23, 1990, 9:57 tape 2. This statement would have been contrary to all of the government witnesses' testimony concerning the value of CIC inventory from a court appointed official charged with valuing the inventory.

Note: On May 30, 1990, the Criminal Referral Form to Executive Office of U.S. Trustees was made by Mr. Weingarten, who upon information and belief was advanced money by Eastland Bank. No accounting of the 11 U.S.C. §364 Agreement has been made available to Petitioner, a signatory to this Agreement, despite several requests.

In light of the argument that Eastland Bank was claiming a security interest in all the coins and other assets of Cumberland Investment Corporation, the information contained in the videotapes and the fact that the stenographic record shows both the context of criminal and civil investigations, would certainly have changed the strategy used by Petitioner at trial.

CONCLUSION: The aggregate of the information withheld from the Petitioner at all stages of the criminal and civil proceedings was deliberate, continuous and substantial. Petitioner, who was C.E.O. of a public entity with certified audits by big-eight accounting firms, was blamed for concealing records in the possession of those who removed the records from his premises. It is now seventeen years since the Trustee in bankruptcy has removed the records of the company and all copies of said records in the possession of others have fallen under the custody and control of the government. Critical information was withheld concerning the possessory collateral, when it was inventoried by Barbara Quinn and Don Etnier, of FDIC, after Eastland Bank failed; the removal of assets by the Examiner; and the disappearance of the inventory records of Cumberland Investment Corporation subsequent to Mr. Cullen removing them from the CIC premises.

Petitioner concludes, and the record supports, that Mr. Monzack, who was the receiver for Eastland Bank as well as the Chapter 7, Trustee in the Cumberland Bankruptcy case, has the videotapes of when the Eastland Bank was taken over in his possession. Eastland Bank and their successors, FDIC, who accused Petitioner of a crime that he was convicted of, are the same parties that withheld evidence concerning the alleged crime itself in order to cover up the fact that some assets of Cumberland, that were stored at Eastland as collateral, were missing or tampered with.

The record will show that the Petitioner was denied a myriad of information in both the civil and criminal cases necessary to defend himself and to best present his case, thus being denied due process and equal protection under the law by the suppression of these records and other information.

Furthermore, the record will show that officers of the court, including Judge Votolato, have engaged in conduct prejudicial to the effective and expeditious administration of this case.

STATEMENT OF THE CASE FOR THE THIRD ISSUE

Whether Judge Votolato has engaged in conduct prejudicial to the effective and expeditions administration of the case thus committing wrongs against the institutions set up to protect and safeguard the public?

TRAVEL AND FACTS:

On or about November 5, 1989, the Cumberland Investment Corporation bankruptcy case was filed in the District of Rhode Island. It has been nearly eighteen years since this filing.

The November 3, 2004, court order both grants the Trustee's motion to strike Petitioner's requests for discovery from the trustee and an accountability of the assets of the estate, it also sanctions Petitioner stating, "....instant filings are frivolous and are hindering the Trustee in performing his duty to conclude this case...."

It has been nearly three years since the November 3, 2004, court order, and nearly eight years since the last of the assets of the estate were sold in 1999, yet there appears to be no sanctions against any party, for hindering the administration of the case, except the Petitioner seeking an accountability of the assets, in this case.

So far, the lack of response to Petitioner's motions to chambers has had a chilling effect upon Petitioner, seeking information and clarifications concerning the October, 2007 billing of Mr. Monzack and Mr. Cullen.

A lack of response from the court in addition to a lack of access to an accounting of the assets of the estate as contained in other court orders (See Exhibit B), court order dated July 3, 1991, where Petitioner (seeking an accounting of the assets of the estate) is accused of "willful interference with the orderly and economic administration of this estate...." makes Petitioner fearful.

DISCUSSION:

The record will show that Judge Votolato's beliefs that Petitioner is willfully interfering with the orderly and economic administration of the estate, may be due in part to representations and misrepresentation from officers of the court. As a direct result, he has engaged in conduct prejudicial to the effective and expeditious administration of the case. Judge Votolato should be recused for the length of time it has taken to close this case and his lack of impartiality as evidenced by no response to motions made to chambers. This case has dragged on for eighteen years while many of Judge Votolato's decisions have been contrary to statute. Despite the fact that it has been pointed out to the court on several occasions, the bankruptcy court judge has allowed an administration of this case which violates the following statutes:

The Trustee according to 11 U.S.C.§327(f) may not employ a person that has served as an examiner in the case. Yet the court has allowed Mr. Cullen to hire Mr. Weingarten to assist him in the sale of the assets of Cumberland Investment Corporation.

The Trustee according to 11 U.S.C.§704(1) shall collect and reduce to money the property of the estate for which such trustee serves and close such estate as expeditiously as is compatible with the best interests of parties in interest. Yet the court has allowed the CIC case to remain open and the unsecured creditors unpaid for eight years after the sale of estate assets and 18 years after the case has commenced.

The Trustee according to 11 U.S.C.§704(2) shall be accountable for all property received and is responsible to furnish such information concerning the estate and its administration as is requested by a party in interest. Although Petitioner is a party in interest, being a 95 percent owner of Cumberland Investment Corporation, he has been unable to obtain an accounting of the assets seized, those sold and those which were not sold, but cannot be located because the court is denying him this information on the basis that Petitioner is interfering with the orderly and economic administration of this case.

ARGUMENT:

The conduct of Judge Votolato is prejudicial to the effective and expeditious administration of the case. Although some of the professionals on the CIC case knew of their conflicts of interest, it is the court which must determine the actual conflict. Judge Votolato abused his discretion by acting contrary to 11 U.S.C.A. 2014(a). It is for the bankruptcy court, not professionals, to determine whether professional's prior connection with a party in interest rise to level of an actual conflict, or pose threat of potential conflict so that professionals must disclose all of its previous contacts with any party in interest. (See **In Re: Citation Corporation, Debtor vs. Valrey W. Early, III,**

U.S. Bankruptcy Administratior, Northern District of Alabama, Defendant, 493 F3d 1313, 1314-5, 11th Cir, 2007.) In **In Re: Citation Corporation**, the matter arising out of a fee application filed by professional, who had violation of his disclosure obligations under Bankruptcy Rule.

In the C.I.C. case, the abuse of discretion is blatant. There is some room for error if one is deciding if Mr. Monzack, receiver for Eastland Bank can act without a conflict by being Chapter 7, Trustee in the CIC case, or whether Mr. Bertozzi and his firm represented Eastland Bank at various stages had a conflict by representing the Examiner and Chapter 11 Trustee. However there can be no doubt of an abuse of discretion to ignore the following statute.

The Trustee according to 11 U.S.C.§327(f) may not employ a person that has served as an examiner in the case. Yet the court has allowed Mr. Cullen, Trustee to hire Mr. Weingarten, who served as examiner in the case, to assist him in the sale of the assets of Cumberland Investment Corporation.

The decisions of the court contrary to statue, 11 U.S.C.§327(f) as listed above also subverts the integrity of the court itself and thus commits wrongs against the institutions set up to protect and safeguard the public. The inability of the Trustee to close this 18 year old case eight years after all the assets of the estate were sold is in itself proof of the lack of expeditious administration of the estate.

The administration of the case cannot be effective when the system as administrated is corrupted with contradictions. The integrity of the system is broken when a Trustee has been placed in the inevitable situation where in addition to representing the interests of the estate, he allegedly represents the interest of the Petitioner by court order, the interests of other creditors, the interests of Eastland Bank, F.D.I.C., Republic Credit Corporation I, and his predecessor, Mr. Cullen.

As successor to Mr. Cullen, Mr. Monzack becomes the transferee or assignee of the Chapter 11, Trustee, who had custody and control of the documents and assets of CIC in both criminal and civil aspects of two collateral cases. Mr. Monzack also inherits custody and control of documents confirming claims of Petitioner that the assets of the estate have been switched, mishandled and are missing.

CONCLUSION:

For the aforementioned reasons, the Judge should recuse himself and the Chapter 7, Trustee should be replaced and the billings of the professionals as well as The Final Report facts and figures should be scrutinized by independent parties appointed by this court and/or any other remedy this court meets just and fair.

STATEMENT OF THE CASE FOR THE FOURTH ISSUE

Petitioner cannot obtain a fair hearing and be granted due process, a Fifth Amendment Right, with Judge Votolato presiding over a case. The end result, being that the Petitioner is denied "equal protection under the law" as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

TRAVEL AND FACTS

Petitioner incorporates the travel and facts of Issues I-III inclusive.

DISCUSSION:

In this case, the Petitioner has been told that he must submit his motions directly to chambers and that the Clerk of Courts shall decline to accept any filings from Petitioner unless such filing has first been present to Chambers and specifically authorized by the Court for filing. Petitioner, in good faith, has sought to operate within the confines of the rules set up by the court and submitted a proposed Motion to Clarify to chambers, with no response from the court. It appears as if any party in the case could file Objection/Response to the billing Application, except Petitioner, thus creating a situation where Petitioner is being denied due process as guaranteed by the Fifth Amendment to the U.S. Constitution as well as equal protection under the law as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

ARGUMENT:

"When Rule 60(b) is in play, we [circuit court] ordinarily defer to the trial judge's more intimate knowledge of the case." **Anderson v Cryovac, Inc.** page 923. "For us to act, there must be an abuse of discretion."

U.S.v. Ayer, 857 Fed 881, 886 (1st Cir 1988.) Under this standard, we reverse only if it plainly appears that the court below committed a meaningful error in judgment. See **In re: San Juan Dupont Plaza Hotel Fire Litigation**, 859 F2d 1007, 1019 (1st Cir. 1988)(delineating standard)

When the court seeks to restrict Petitioner's participation, requiring Petitioner to file motions directly to chambers and then not respond to these motions, the court has abused its discretion and Petitioner is denied due process.

Furthermore, when virtually every party in the case is given an option to object or respond to a motion or not, and where only Petitioner is being denied the ability to respond or object, Petitioner is being denied equal protection under the law to respond and or object.

However, the Petitioner has a duty to protect his own interests, especially when it appears as if the Trustee does not represent his interests at all and the court is not being fair and impartial.

"In our adversary system of justice, each litigant remains under an abiding duty to take the legal steps that are necessary to protect his or her own interests." **Cotto v. United States**, 993 F.2d. 274, 1st Cir. 1993 at 278.

Although Petitioner failed to appeal the November 3, 2004, decision because at that time he felt overwhelmed with the situation subsequent to the Supreme Court not granting certiorari, Petitioner now appeals to this honorable court because of a change in the circumstances with the governing of this case. Strictly using a "reasonable man" standard, Petitioner cannot obtain a fair hearing and obtain due process when the court refuses to respond to Petitioner.

> "Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." **28 U.S.C. §§455(a).**

There is little doubt that a "reasonable man" would respond to Petitioner. The well established test in the first circuit is an objective one. See **U.S. v Cowden**, 545 F2d. 257, 265, 1st Cir., 1976. According to Cowden,

> "Whether the charge of lack of impartiality is grounded on facts that would create a reasonable doubt concerning the judges impartiality, not in the mind of the judge himself or even necessarily in the mind of the litigant filing the motion under 28 U.S.C. §455, but rather in the mind of a reasonable man."

CONCLUSION:

Petitioner cannot obtain a fair and just hearing before this judge, who has stated that, Petitioner has obstructed the case, acted in bad faith and has done "intentional harm to this estate". (See EXHIBIT B-3) Judge Votolato should be recused because of his abuse of discretion and his lack of impartiality towards Petitioner in the eyes of a "reasonable man" as well as his "meaningful errors in judgment". Furthermore, the previous rulings of the bankruptcy court and the fairness of the criminal trial, should be questioned in light of the information contained in the four arguments presented to this court.

Respectfully submitted,

s/Harold F. Chorney
16 Spring Drive
Johnston, R.I. 02919
401 934-0536

CERTIFICATION

On this ___ day of November, 2007, Petitioner, Harold F. Chorney mailed by first class mail a copy of the Motion and Memorandum to Appeal and/or Amend Bankruptcy Order, dated November 3, 2004 with Exhibits to the following:

Arthur N. Votolato, Judge

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CERTIFICATION ADDENDUM

On this ___ day of November, 2007, Petitioner, Harold F. Chorney mailed by first class mail a copy of the Motion and Memorandum to Appeal and/or Amend Bankruptcy Order, dated November 3, 2004 with Exhibits to the following:

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